

10/6/2009 1:36 PM

DEVELOPMENT LEASE AGREEMENT

BETWEEN

YONKERS COMMUNITY DEVELOPMENT AGENCY

AND

CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY

ON BEHALF OF

SFC H AND I LLC

Palisades Point Project

Section: 1

Block 640, Lot 38

Block 643, Lot 1, portion of Lot 24, Lot 40

City of Yonkers

Westchester County

PLEASE RECORD AND RETURN TO:

City of Yonkers
Corporation Counsel
City Hall – 3rd Floor
Yonkers, N. Y. 10701

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AGREEMENT OF LEASE (the "Lease") dated as of _____, 200_ by and between the **YONKERS COMMUNITY DEVELOPMENT AGENCY**, a public benefit corporation having its principal office at 40 South Broadway, Yonkers, New York , as landlord ("CDA"), and **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation having its offices at 470 Nepperhan Avenue, Yonkers, New York 10701("YIDA"), as tenant on behalf of SFC H and I LLC, a limited liability company organized and existing under the laws of the State of New York (the "Company," and also sometimes referred to herein as the "Sponsor") and a related entity of Struever Fidelco Cappelli LLC ("SFC"), having its principal office at c/o Cappelli Enterprises, Inc.,115 Stevens Avenue, Valhalla, New York 10595.

W I T N E S S E T H:

WHEREAS, in furtherance of the objectives of Articles 15 and 15-A of the General Municipal Law of the State of New York, as amended (collectively referred to herein as "Article 15"), the CDA and the City of Yonkers (the "City") have undertaken a program for the acquisition, clearance, replanning, reconstruction and neighborhood rehabilitation of slum and blighted areas in the City, as more particularly set forth in the Modified Urban Renewal Plan, N.D.P. Areas No. 1 and 2 for the Riverview Urban Renewal Area dated , dated December, 1998, and last amended in October, 2004 and May 19,2009 (the "Riverview Urban Renewal Plan"); and

WHEREAS, a copy of the aforesaid Riverview Urban Renewal Plan, has been or will be filed in the office of the Yonkers City Clerk; and

WHEREAS, in order to facilitate the objectives of the Riverview Urban Renewal Plan, the CDA and the City have approved a Master Plan & Design Guidelines for the Yonkers Downtown Waterfront (the "Master Plan") and in connection therewith, the CDA, as lead agency for the implementation of the Master Plan, has also prepared a Final Generic Environmental Impact Statement in compliance with the State Environmental Quality Review Act ("SEQRA"), and by resolutions adopted by the CDA on December 16, 1998 and by the City Council on April 14, 1999, the CDA and the City approved a Statement of Environmental Findings with respect to the Master Plan; and

WHEREAS, the Master Plan calls for the redevelopment of a major portion of the downtown waterfront area of the City, extending north and south from the foot of Main Street and situated principally within N.D.P. Area No. 2 of the Riverview Urban Renewal Plan, including Parcels "H" and "I" of the Master Plan; and

WHEREAS, by Resolution No. 71-2006 adopted by the City Council of the City of Yonkers ("City Council") on April 4, 2006, and by Resolution No.16-2006 adopted by the CDA on May 17, 2006, SFC, or an entity created, affiliated or related to SFC, was duly designated as a qualified and eligible sponsor for redevelopment of the Premises provided that all requirements of Article 15 have been met and that negotiations for the terms and provisions with respect to the

development of the Premises have been completed and have been approved by both the CDA and the City Council; and

WHEREAS, On March 18, 2008, pursuant to 6 NYCRR §617.9(a)(2), the City Council, acting in its capacity as lead agency for review of the Project under the State Environmental Quality Review Act ("SEQRA"), accepted a Draft Environmental Impact Statement ("DEIS") prepared by SFC for the Project (and certain other redevelopment projects proposed by SFC) and all related actions as adequate with respect to its scope and content for the purpose of commencing public review; and

WHEREAS, On October 7, 2008, the City Council accepted a Final Environmental Impact Statement ("FEIS") prepared by SFC for the Project and all related actions as complete and duly filed the FEIS; and

WHEREAS, on November 5, 2008, the City Council issued its SEQRA Statement of Environmental Findings in connection with the Project and all related actions (the "SEQRA Findings Statement"); and

WHEREAS, on May 19, 2009, by Resolution No. 90-2009, the City Council approved an amendment to the Riverview Urban Renewal Plan making the residential project on the Premises an integral part of the Riverview Urban Renewal Plan and extending the duration of controls until 2048; and

WHEREAS, on May 19, 2009, by Resolution No. 91-2009, the City Council approved an amendment to the Master Plan to permit an increase in the maximum height of buildings on the Premises; and

WHEREAS, on May 20, 2009, the Yonkers Planning Board granted Planned Urban Redevelopment approval for the Premises, subject to approval by the City Council; and

WHEREAS, on June 9, 2009, the City Council granted Planned Urban Redevelopment approval for the Premises; and

WHEREAS, on June 10, 2009, the Yonkers Planning Board approved the Site Plan for the Premises; and

WHEREAS, pursuant to SEQRA, CDA by Resolution No. 200 adopted on _____, 200_ certain findings were adopted relating to the proposed Land Disposition Agreement (the "LDA") by and among CDA, YIDA, the City of Yonkers, Yonkers Economic Development Corporation, New Main Street Development Corporation and SFC and confirmed CDA as an involved agency in accordance with SEQRA regulations; and

WHEREAS, pursuant to subdivision 2 of Section 507 of Article 15, the City Council held a public hearing after due notice on June 9, 2009 and thereafter by Resolution No. __-200_ adopted on _____, 200_, duly approved the terms and provisions of the LDA and the disposition of the Premises to the Sponsor, and subject to the approval of CDA, the earlier

designation of SFC, or an entity created, affiliated or related to SFC, as a qualified and eligible sponsor was re-designated after SFC completed a revised Redeveloper's Statement of Qualifications and Responsibility and a Redeveloper's Statement for Public Disclosure ("HUD Disclosure Forms") and after the financial advisor for the City and CDA reviewed the financial statements of SFC and its sponsors; and

WHEREAS, pursuant to subdivision 2 of Section 507 of Article 15, CDA by Resolution No. __-200_ adopted on _____, 200_, approved the proposed LDA; the earlier designation of SFC, or an entity created, affiliated or related to SFC, as a qualified and eligible sponsor was re-designated after SFC completed revised HUD Disclosure Forms and after the financial advisor for the City and CDA reviewed the financial statements of SFC and its sponsors; and provided for, among other things, the execution and delivery of this Lease upon the satisfaction of certain conditions set forth in the LDA, and by the same resolution authorized CDA to execute and deliver the LDA and this Lease; and

WHEREAS, in furtherance of the Riverview Urban Renewal Plan, CDA and YIDA entered into above-referenced LDA, dated as of _____2009, a memorandum of which was recorded in the Office of the Office of the Westchester County Clerk, Land Records Division (the "County Clerk's Office") on _____2009 as Control No. _____, which provided for, among other things, a development lease, by and between CDA and YIDA, for redevelopment, of certain parcels of land located within the Riverview Urban Renewal Area and designated as follows, and as more particularly described in Schedule A attached hereto and made a part hereof (the "Premises"):

Section 1, Block 640, Lot 38 (0.5 acre land)
Section 1, Block 643, Lot 1 (0.557 acres land)
Lot 24 (0.381 acres land)
Lot 40 (.0836 acres land)

(excluding any lands under water or riparian rights)

WHEREAS, the LDA contemplates the involvement of YIDA so that the Sponsor can receive certain financial benefits as more particularly set forth in the LDA, and, therefore, YIDA holds a leasehold interest in the Premises under this Lease on behalf of the Sponsor and is, in turn, subleasing the Premises to the Sponsor under that certain lease agreement of even date herewith between YIDA and the Sponsor (the "Sublease," and sometimes referred to herein and in the LDA, as the "Financing Lease"); and

WHEREAS, YIDA has agreed to accept the leasehold in the Premises demised pursuant to this Lease solely for the purpose of preserving the financial benefits described in the previous WHEREAS clause for the Sponsor, and for no other purpose, and, accordingly, (i) all obligations of YIDA under this Lease shall be special obligations of YIDA payable solely out of any amounts to be paid and actions to be taken by the Sponsor under the Sublease and the LDA, and

CDA shall have no other recourse whatsoever against YIDA with respect to such obligations, and (ii) all obligations undertaken by YIDA pursuant to this Lease shall be obligations of the Sponsor only and not of YIDA; and

WHEREAS, CDA has determined that the redevelopment of the Premises as contemplated in the LDA and this Lease, and the fulfillment generally of the terms of this Lease, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable Federal, State and local laws and requirements under which the Premises as an urban renewal project has been undertaken and is being assisted; and

WHEREAS, all conditions for the execution and delivery of this Lease have either been satisfied or waived in accordance with the LDA,

NOW THEREFORE, in consideration of the above premises, the mutual covenants contained in this Lease, and the payment of the rent as provided hereunder, CDA, YIDA and the Sponsor agree as follows:

ARTICLE I

DEFINITIONS

Any terms not defined herein shall be as defined in the LDA. All other terms when used in this Lease with an initial capital letter or letters shall have the meaning given it below:

“Adjournment Notice” has the meaning provided in Section 7.3.

“Affiliate” or “Affiliates” shall mean an entity which directly or indirectly through one or more intermediaries controls, or is under common control with, SFC or the Principals; the term “control” (including the related terms “controlled by” and “under common control with”) means: (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise; and (ii) the ownership, either directly or indirectly, of at least fifty percent (50%) of the voting stock or other equity interest of such entity.

“Affordable Housing Commitment” shall mean, if SFC and/or the Sponsor constructs residential units at the Project on the Premises before residential units are constructed at the River Park Center site, then until such time as residential units are constructed at the River Park Center site, SFC shall comply with the Affordable Housing Commitment under the LDA by providing affordable housing units on an interim basis equal to 14% of the total number of market rate housing units constructed at the Project. The interim program for affordable housing units shall be limited to off-site affordable housing units on the west side of the MetroNorth Hudson Line tracks in Yonkers equal to 3% of the number of market rate units constructed on the Premises; 3% of the units shall be new or rehabilitated units constructed within the downtown areas, and the remaining 8% shall be any combination of new and rehabilitated units in the downtown area, or payment of a fee in lieu equal to \$61,000 per unit, as SFC may elect. The Affordable Housing Commitment shall be subject to a regulatory agreement between CDA

and SFC to assure the maintenance, operation and delivery of affordable housing units for a period of thirty years from the date of substantial completion of the Project; provided that units having a tenant in occupancy as of the expiration of the initial term will continue to be maintained as affordable housing for up to 20 additional years so long as that tenant continues to renew the lease, and further provided that nothing shall prohibit termination of a lease at any time for non-payment or as a result of any other breach by the tenant..

"Annual Rent" shall have the meanings set forth in Section 3.1 of this Lease.

"Architect", with respect to the site plan, landscaping, interior and exterior design and surfacing, roof treatment and general massing, pedestrian and vehicular circulation, building layout and urban design aspects of the Improvements, means one or more registered architects or architectural firms selected by the Company, provided the company shall give CDA notice and evidence of appropriate credentials to design such aspects of the Improvements.

"CDA" means the Yonkers Community Development Agency, a municipal urban renewal agency and a body corporate and politic created by Chapter 884 of the Laws of 1964, as amended, and codified under Section 605, Article 15-B, Title 36 of the General Municipal Law of the State of New York; and a corporate governmental agency, constituting a public benefit corporation under Section 553(2) of Article 15-A of said General Municipal Law. Whenever CDA is referred to herein, it shall also mean any successors, heirs or assigns of CDA and of the interests of CDA in the Premises and this Lease. For the purposes of this Lease, any review or approval required by the CDA in connection with the development of the Premises shall mean the review and approval by the _____, designated as CDA's Project Manager under the LDA.

"City" means The City of Yonkers, New York, a municipal corporation.

"Commencement Date" means the first day of the first full calendar month following the calendar month in which the Lease is fully executed and delivered by and between both parties hereto.

"Company" or the "Sponsor" means Sponsor, SFC H and I LLC, a limited liability company organized and existing under the laws of the State of New York, having a principal office at c/o Cappelli Enterprises, Inc., 115 Stevens Avenue, Valhalla, New York 10595. Whenever the Company is referred to herein, it shall also mean any successors, heirs or assigns of the Company or the interests of the Company under this Lease.

"Condemnation Award" means the aggregate amount of any condemnation award or awards payable with respect to a Taking, whether by agreement or pursuant to a judgment or otherwise, with any interest on such amount, including consequential damages to any portion of the Premises not taken, net of any unreimbursed costs and expenses of collecting the same.

"Construction Agreements" means the construction agreements, or contracts, together with all amendments, modifications and supplements thereof, for the construction of the Project,

including, without limitation, general agreements or contracts for, project management, construction management, and architect services and any subcontractors.

"Construction Plans" means the plans and specifications for the Project with respect to which a building permit for the construction of the Project has been issued by the City of Yonkers Department of Housing and Buildings.

"Contractor" means any party (other than the SFC or the Sponsor) to a Construction Agreement.

"Date of Taking" means the date as of which YIDA and the Sponsor is deprived of possession of any property involved in a Taking.

"Default Rate" means the rate of interest which is three percent (3%) over the rate of interest, averaged on a monthly basis, charged from time to time for commercial loans to most-preferred customers by TD Bank (or any successor thereto). The Default Rate shall be computed separately for each month, or any part thereof, during which any amount upon which interest is to be charged hereunder remains unpaid hereunder.

"DEC" means the New York State Department of Environmental Conservation.

"Early Exercise" has the meaning provided in Section 12.1.

"Equipment" means all fixtures and equipment, apparatus, appliances, appurtenances, devices, furniture, furnishings, machinery and other articles of personal property of every kind and nature whatsoever incorporated in, or which are attached or appurtenant to, the Premises and/or the Improvements, and/or any parts of either, for the use, operation maintenance or repair of plant and facilities, or which are acquired for any of the foregoing purposes, together with all additions thereto, replacements thereof and substitutions therefor, and shall include, without limitation, all machinery, dynamos, boilers, heating and lighting equipment, pipes, pumps, grounds, road, beach and other maintenance equipment, tanks, motors, air conditioning compressors, conduits, fittings, ventilating and communications apparatus, built-in furniture and cabinetry, elevators, escalators, incinerators, garbage compactors, antennas, computers, sensors, plumbing, heating, lighting and cooking fixtures and units, radio and television aerials, fireplace mantles, laundry equipment, refrigerators, stoves and ranges, dishwashers and other kitchen appliances, door mirrors, Venetian blinds, shades, screens, awnings, storm windows, window boxes, storm doors, mail boxes weather vanes, flag poles, pumps, shrubbery and outdoor statuary. Notwithstanding anything contained herein to the contrary, any fixtures, equipment, apparatus, appliances, appurtenances, devices, furniture, furnishings, machinery or other articles of personal property of every kind and nature whatsoever which are owned by the Company's subtenants, contractors, architects, engineers, project and/or construction managers or vendors or managing agents shall not be deemed to be "Equipment" for any purpose under this Lease.

"Event of Default" has the meaning provided in Section 13.1 hereof with respect to YIDA and in Section 14.1 hereof with respect to CDA.

"Final Completion" with respect to the Improvements (but not including any tenant improvements), means that all "punch list" items identified at Substantial Completion of that

Improvement have been fully completed and the Architect has determined that all work with regard to that Improvement has been completed in full compliance with the Construction Plans for such Improvement, subject to such field changes and similar changes and variations as have been approved by the City of Yonkers Department of Housing and Buildings.

"Financing Commitment" means a commitment or commitments which has or have been accepted by the Sponsor from one or more equity investors or Institutional Lenders, to finance the construction of the Project.

"Financing Entity" shall mean and refer to Institutional Lender(s), or to investors admitted in compliance with any applicable requirements for Article XI of this Lease.

"FTA" has the meaning provided in Section 6.2.4.

"Governmental Agency(ies)" means all federal, state, county, municipal and other governments and all subdivisions, agencies, authorities, departments, courts, commissions, boards, bureaus and instrumentalities of any of them having jurisdiction of CDA, YIDA, the Company and the Premises, or any of them.

"Governmental Approvals" means the permits, approvals, consents, determinations, findings and other actions of Governmental Agencies.

"Hazardous Substance" means any hazardous, dangerous, toxic or restricted material, waste, product or substance which is defined or identified as such in any Federal, State or local laws, rules, regulations, policies or guidelines, and also includes asbestos and any petroleum products, industrial waste or other chemical contamination.

"Impositions" means the taxes, utility charges and other costs to be paid by YIDA pursuant to Article VI.

"Improvements" means any and all buildings, structures, utility installations, paving, landscaping and other improvements now or hereafter located on the Premises, and all fixtures and non-movable equipment thereon, and any subsequent alterations, additions or replacements to or of any of the foregoing, made in connection with the Sponsor's development of the Premises and as more particularly described in Section 5.1 hereof.

"Initial Cure Period" has the meaning provided in Section 7.3.

"Institutional Lender" means a state or federally chartered savings bank, savings and loan association, credit union, commercial bank or trust company, or foreign banking institution authorized to do business in New York (whether acting individually or in a fiduciary capacity); an insurance company organized and existing under the laws of the United States or any state thereof or a foreign insurance company authorized to do business in New York; a publicly held real estate investment trust; a brokerage or investment banking organization (acting as principal or agent); a religious, educational or eleemosynary institution; an employees' welfare, benefit, pension or retirement fund; any governmental agency or entity insured by a governmental agency or any combination of Institutional Lenders; provided that each of the above entities shall qualify as an Institutional Lender only if it shall: (i) be subject to the jurisdiction of the courts of

the State of New York in any action; and (ii) have assets of not less than One Hundred Million Dollars (\$100,000,000.00) adjusted for inflation.

"Insurance Proceeds" means the proceeds obtained under any insurance policy the Sponsor is required or permitted to maintain under this Lease, net of the unreimbursed costs and expenses incurred in the collection of such proceeds.

"Lead Lender" means an Institutional Lender that participates in a Leasehold Mortgage financing, as permitted hereunder, in an amount which is not less than 80% of the total development costs for the Project.

"Lease", "the Lease" or "this Lease" or "this Agreement of Lease" means this Agreement of Lease and all exhibits hereto and all amendments, modifications and supplements hereof.

"Leasehold" or "Leasehold Estate" means the estate for years and other interests in the Premises conveyed to YIDA on behalf of Sponsor by this Lease.

"Leasehold Mortgage" shall mean each mortgage which under the terms of this Lease constitutes a lien on this Lease, YIDA's Leasehold Estate in the Premises, and/or YIDA's or the Sponsor's interest in the Improvements and/or the Equipment, or any refinancing thereof permitted under the terms of this Lease. In the event there shall exist at any point in time more than one Leasehold Mortgage, all such Leasehold Mortgages may sometimes hereinafter be collectively referred to as the "Leasehold Mortgage".

"Leasehold Mortgagee" shall mean the holder, or collectively, the holders, of a Leasehold Mortgage. In the event there shall exist at any point in time more than one Leasehold Mortgage, the holders of such Leasehold Mortgages may sometimes hereinafter be collectively referred to as the "Leasehold Mortgagee".

"Lease Year" means a period of twelve (12) consecutive calendar months commencing as provided in Section 2.2.1 of this Lease.

"Mortgagee Notice of Termination" has the meaning provided in Section 7.3.

"New Street" has the meaning provided in Section 5.1.

"Partial Taking" means a Taking that is not a Total Taking or a Temporary Taking.

"Permitted Title Exceptions" means the matters described as such in Exhibit A hereof.

"Person" means an individual, corporation, partnership, limited partnership, joint venture, limited liability company, limited liability partnership, estate, trust or unincorporated association, any Federal, State, County or municipal government or any bureau, department, public corporation or agency thereof, any political subdivision, any fiduciary acting in such capacity on behalf of any of the foregoing, or any other legal or business entity.

"Premises" means the real property described on Exhibit A hereto, together with the Improvements and the Equipment on the Premises.

“Project” or Project Improvements means, collectively, the Improvements, the Waterfront Public Improvements and the New Street as described in Section 5.1

"Purchase Notice" has the meaning in Section 12.1.

"Rent" means the rent described in Article III, including Annual Rent, Additional Rent and any other payment of money that YIDA is obligated to make under this Lease, whether payable to CDA or to any other Person.

"Requirements of Governmental Agencies" means any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders and requirements of all Governmental Agencies applicable to the Premises and the construction, use and occupancy thereof, and shall include, without limitation of the foregoing, the Site Plan, the Master Plan and the Riverview Urban Renewal Plan.

"SEQRA" means Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law of the State of New York, and the implementing regulations set forth in 6 NYCRR Part 617.

“Site Plan” means the site plan for the Project Improvements approved by the Yonkers Planning Board on June 10, 2009, as the same may be amended from time to time .

"Substantial Completion" of, or "Substantially Complete(d)" with respect to Project Improvements, means that the Department of Housing and Buildings has issued a temporary certificate of occupancy therefor. Substantial Completion with respect to the Waterfront Public Improvements or any type of public improvement means that the City Engineer has issued an appropriate certification of completion of an improvement with respect to which the Department of Housing and Buildings does not in the normal course issue a certificate of occupancy. Substantial Completion of the residential buildings shall not occur unless and until the Company or SFC enters into a regulatory agreement in connection with the Affordable Housing Commitment.

"Substantial Completion Date" has the meaning provided in Section 4.1.

"Sugar Refinery Property" has the meaning provided in Section 5.1.

"Taking" means any taking or damaging of all or any part of, interest in, or right appurtenant to the Premises by any Governmental Agency, or deed in lieu of any such taking, as a result of or in lieu of or in anticipation of or under threat of the power of condemnation or eminent domain, including severance damage and any change in grade.

"Taxes" shall have the meaning set forth in Section 6.2 of this Lease.

"Temporary Esplanade Improvements" has the meaning provided in Section 4.1. The Temporary Esplanade Improvements shall be constructed on a Retained Unit (as that term is defined in the LDA) and not on the Premises.

"Temporary Taking" means a temporary Taking that does not extend beyond the Term of this Lease, so that CDA's fee title interest hereunder is unaffected by such Taking.

"Term" shall have the meaning set forth in Section 2.2 of this Lease.

"Termination Date" has the meaning provided in Section 7.3.

"Termination Notice" has the meaning provided in Section 13.2.

"Total Taking" means a Taking, whether permanent or temporary, the effect of which is that the portion or portions of the Premises remaining cannot, despite the use of condemnation proceeds available for repair or restoration, be practically and economically used or converted for use by YIDA for the uses of the Premises, and of the Improvements, permitted in this Lease.

"Transfer Date" means the date on which CDA shall convey fee title interest in the Premises to the Sponsor.

"Unavoidable Delay" or "Unavoidable Delays" means any delay, obstruction or interference resulting from any act or event whether affecting the Project, the City, the City Entities or the Sponsor, which has a material adverse effect on such party's rights or duties, provided such act or event is beyond the reasonable control of such party after pursuing all diligent efforts to remedy the delaying condition in an expedient and efficient manner and was not separately or concurrently caused by any negligent or willful act or omission of such party and/or could not have been prevented by reasonable actions on such party's part (and such party shall have notified the other party herein not later than ten (10) days after the occurrence of any Unavoidable Delay enumerated in (i) through (vii) below and within a reasonable time for any other Unavoidable Delay), including, but not limited to, delay, obstruction, or interference resulting from:

- (i) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the Premises), landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy or terrorist, war, blockage or insurrection, riot or civil disturbance;
- (ii) any legal proceeding commenced by any third party seeking judicial review of this Agreement, the SEQRA Findings Statement, the Site Plan Approval and/or any of the City Approvals (and any other approvals and/or permits necessary for the development of the Project issued by City Governmental Agencies or Governmental Authorities) commenced within four (4) months of the issuance thereof, and any restraint of law (e.g., injunctions, court or administrative orders, or legal moratoria imposed by a court or Governmental Agency or Governmental Authority), and any legal proceeding commenced by third parties to prevent acquisition by a

City Entity of any property required to be acquired by such City Entity under this Lease;

- (iii) failure for a period of 30 days or more of any utility or governmental entity to provide and maintain public and private utilities, including power transmission lines, required for the construction of the Project Improvements;
- (iv) any unexpected or unforeseen subsurface condition inconsistent with typical background conditions which prevents construction of, or requires a material redesign or change in the construction of, or materially adversely affects the completion schedule for, the Project Improvements;
- (v) strikes, work stoppages or other substantial labor disputes; or
- (vi) the failure or inability of any subcontractor or supplier to furnish supplies or services if such failure or inability is itself caused by Unavoidable Delay and could not have been reasonably prevented and the affected party cannot reasonably obtain substitutes therefor.

Notwithstanding anything in this Agreement to the contrary, during a period of Unavoidable Delay, the performance of obligation(s) under this Lease of the party asserting the Unavoidable Delay shall be tolled day for day of Unavoidable Delay; provided however, in the event of any extension(s) hereunder of the time for Substantial Completion or Final Completion by reason of one or more events of Unavoidable Delay, the periods of extension (considered cumulatively and in the aggregate for all such events of Unavoidable Delay), shall not exceed the periods provided in this Lease.

"Waterfront Public Improvements" has the meaning provided in Section 5.1. The Waterfront Public Improvements is part of the Project Improvements under this Lease, but shall be constructed on a Retained Unit (as that term is defined in the LDA) and not on the Premises.

"YIDA" means the City of Yonkers Industrial Development Agency, a public benefit corporation organized and existing under the Laws of 1982, Chapter 83 and as set forth in Title 1 of Article 18-A of the General Municipal Law of the State of New York. Whenever YIDA is referred to herein, it shall also mean any successors, heirs or assigns of YIDA and of the interests of YIDA in the Premises and this Lease; and whenever it is provided hereunder for YIDA to perform, it shall mean that YIDA shall cause the Company to perform.

"Zoning Ordinance" means the Zoning Ordinance of the City of Yonkers.

ARTICLE II

GRANT OF TERM

Section 2. Grant. For and in consideration of the payment of Annual Rent and the mutual covenants and agreements contained in this Lease, CDA hereby grants and leases the Premises to YIDA on behalf of the Sponsor, and YIDA, on behalf of the Sponsor, hereby takes and leases the Premises from CDA, on the terms and conditions set forth in this Lease.

Section 2.1 Term. The term (the "Term") of this Lease shall commence on the Commencement Date and shall end on the last day of the forty-ninth (49th) Lease Year. The term of this Lease may be extended up to and including the last day of the seventy-fifth (75th) year, at the request of the Sponsor, based upon sufficient justification made in the application therefor to the CDA. The first Lease Year during the Term shall commence on the Commencement Date, and shall end on the last day of the twelfth (12th) full calendar month following the calendar month in which the Commencement Date occurs. The second (2nd) Lease Year shall commence on the first (1st) day following the expiration of the first Lease Year, and each subsequent Lease Year during the Term shall commence on the anniversary of such first (1st) day of the second (2nd) Lease Year.

Section 2.2 Title. The Sponsor has engaged a title company to obtain title insurance under an ALTA Leasehold Policy and/or an ALTA Leasehold Loan Policy which (a) reflects the status of the fee interest of the Premises as well as YIDA's and the Sponsor's option to purchase the fee interest in the Premises, and (b) insures that this Lease and the Sublease are not subordinate to any lien or encumbrance (other than the Leasehold Mortgage, if any), and such status of title has been accepted by the Sponsor, subject to the Permitted Title Exceptions, and YIDA hereby represents and warrants that such title is hereby accepted by YIDA, subject to the Permitted Title Exceptions.

Section 2.3. Quiet Enjoyment. Subject to the Permitted Title Exceptions and the terms and provisions of this Lease, YIDA shall have and enjoy throughout the Term the quiet, peaceful, exclusive and undisturbed possession of the Premises, without hindrance, ejection or molestation by any Person.

Section 2.4 Possession. CDA shall deliver actual possession of the Premises under this Lease to YIDA on the Commencement Date.

Section 2.5 "Net" Lease. This Lease shall be a completely net lease and the Rent and all other sums payable hereunder by YIDA shall be paid without notice or demand, and without setoff, counterclaim, recoupment, abatement, diminution, deduction, reduction or defense, except as otherwise specifically set forth herein or in the LDA. YIDA shall cause the Company to be responsible for all maintenance and repairs of the Premises and operating expenses, including but not limited to real estate taxes, water, gas, electric and sewer charges and utilities; and any other state, county or municipal charges, and any special assessments.

ARTICLE III

RENT

Section 3.1 Annual Rent.

(1) From the Commencement Date and for the first through fifth Lease Years, YIDA shall pay or cause the Company to pay Annual Rent for each Lease Year in the amount of \$114,000, payable annually in advance commencing on the Commencement Date.

(2) For the sixth through tenth Lease Years, YIDA shall pay or cause the Company to pay Annual Rent in the amount of \$228,000 payable annually in advance.

(3) For the eleventh through forty-ninth Lease Years, YIDA shall pay or cause the Company to pay Annual Rent in the amount of \$456,000 payable annually in advance; provided that on the first day of the twelfth Lease Year, and again on the first day of each Lease Year thereafter (each such date a "Rent Adjustment Date"), the Annual Rent shall be increased in proportion to the amount of the increase, if any, in the Consumer Price Index (as defined below) for the month preceding each such Rent Adjustment Date over the Consumer Price Index for the month in which the Commencement Date occurs. As used herein, the term "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of labor, New York, New York – Northeastern New Jersey Area, All Items, or any successor index thereto appropriately adjusted. In the event that the Consumer Price Index is converted to a different standard reference base or otherwise revised, the determination of adjustments provided for herein shall be made with use of such conversion factor, formula or table for converting the Consumer Price Index as may be published by the Bureau of labor Statistics, or, if the Bureau of labor Statistics shall not publish the same, then with the use of such conversion factor, formula or table for converting the Consumer Price Index as may be published by any nationally recognized publisher of similar statistical information. In no event shall there be a decrease in Annual Rent as a result of such adjustments.

(4) If at any time, at least sixty (60) days prior to Rent Adjustment Date, the parties hereto agree to establish a fair market rental value for the Premises, the Annual Rent shall be redetermined based upon the then current appraised value, provided that, in no event shall the Annual Rent be decreased. For the purposes of this Lease, the then current appraised value shall be determined as follows: Appraisals shall be made by three appraisers, of which one shall be selected by YIDA and one shall be selected by CDA. The two appraisers shall jointly select the third appraiser. The average of the two closest appraisals shall be the basis for determining the Annual Rent hereunder, which average appraisal shall be further adjusted to reflect the pro rata value of the Premises. Thereafter, the adjusted Annual Rent shall continue to be increased by the Consumer Price Index each Lease Year as aforesaid. YIDA, through the Company, and the CDA shall bear the cost of the appraisals as a joint expense.

Section 3.2 General Provisions Regarding Payment
of Annual Rent.

Subsection 3.2.1. Offset, Abatement or Deduction. YIDA shall pay all Annual Rent to CDA without notice and free of any offset, abatement or other deduction whatsoever, except as expressly provided in this Lease.

Subsection 3.2.2. Form and Place of Payment. All Rent shall be paid in the lawful money of the United States of America to CDA at CDA's address for notices or to such other Person or address as may have been identified in a notice given by CDA to YIDA and the Company. CDA agrees to accept payment of the Rent by check directly from the Company.

Subsection 3.2.3. Late Payment. If any payment of Annual Rent is not made within ten (10) days after the date due and payable under this Lease (the "due date"), then such payment shall bear interest from the due date until paid at the lesser rate of the Default Rate or the highest rate permitted under the Requirements of Governmental Agencies . This interest shall be due on late payments without any notice and regardless of whether or not an Event of Default ever occurs with respect to such late payment.

Section 3.3 Additional Rent.

In addition to Annual Rent, YIDA shall pay, as additional rent, without demand, abatement, offset or deduction (except as expressly provided to the contrary herein), when due and payable as provided in this Lease, all sums, charges and expenses, however characterized, that YIDA or the Company is obligated to pay, to CDA or to any third party, pursuant to any of the provisions of this Lease, including, without limitation, Impositions, insurance premiums and late charges ("Additional Rent"). Any payment made by YIDA or the Company to CDA, regardless of how such payment is characterized, shall be applied first to the reduction of any interest then due and payable to CDA hereunder, then to the payment of any other Additional Rent then due and payable hereunder, and then to the payment of any Annual Rent payable hereunder. In the event of any failure on the part of YIDA or the Company to pay any Additional Rent, CDA shall have all the rights and remedies provided for in this Lease or at law or in equity or otherwise (except as such legal or equitable remedies may be modified by the terms of this Lease) to enforce the collection of such Additional Rent.

ARTICLE IV

CONSTRUCTION

Section 4.1 Construction of the Project
Improvements .

(a) . In consideration of the almost unprecedented stresses on the credit markets and the downturn in the retail and residential economic markets, the Company shall use best efforts and commercially reasonable efforts to commence construction of one of the two residential towers of Project Improvements not later than the tenth (10th) anniversary of the Commencement Date under this Lease, and once commenced, construction shall be prosecuted with all

reasonable diligence and without interruption subject to Unavoidable Delays. The Project Improvements shall be Substantially Completed in a good and workmanlike manner in accordance with the Construction Plans, the Site Plan, the Requirements of Governmental Agencies, the LDA and this Lease, subject to Unavoidable Delays, no later than twenty-four (24) months after the date of commencement of construction (the "Substantial Completion Date"); provided that in the event of any extension(s) hereunder of the time for Substantial Completion of the Improvements, by reason of one or more events of Unavoidable Delay, the period of extension (considered cumulatively and in the aggregate for all such events of Unavoidable Delay), shall not exceed twelve (12) months. Except as otherwise provided in this Lease, the cost of construction of the Project Improvements shall be at the sole expense of the Company.

(b) Upon request, following issuance of a Temporary Certificate of Occupancy for any part or element of the Project Improvements, and upon CDA's determination that the standards and requirements for construction of the Project in accordance with the Construction Plans have been satisfied, which determination shall not be unreasonably withheld or delayed, CDA shall provide a formal Certificate of Completion, duly executed and acknowledged in proper form for recordation in the Westchester County Clerk's Office, Land Records Division, confirming compliance with all completion requirements set forth in this Lease and/or in the LDA, with respect to the subject Project Improvements.

(c) Notwithstanding anything to the contrary in the LDA or this Lease: (i) if for any reason the Waterfront Public Improvements have not been commenced and completed by the second (2nd) anniversary of the Commencement Date, the Company shall as soon as practicable thereafter construct temporary open space and esplanade improvements and landscaping in place thereof in accordance with and as shown on the plan attached as Exhibit__hereto (the "Temporary Esplanade Improvements"); and (ii) the Company shall in all events Substantially Complete the Waterfront Public Improvements by the earlier of (x) the fifth (5th) anniversary of the Commencement Date, or (y) the date on which at least one of the two towers of the Project Improvements is Substantially Completed.

Subsection 4.1.1. Future Applications. YIDA shall cause the Company to apply for any permits or licenses necessary for the operation of the Project as soon as such applications can appropriately be made. CDA agrees upon request to join in the signing of any applications for such licenses and permits, not heretofore obtained, as may be required for the development, construction, and operation of the Improvements, and the uses contemplated by this Lease, including applications for licenses and permits where the signature of CDA is required by applicable laws in force at the time, or as may be reasonably desired. This obligation shall not be deemed to limit CDA's or the City's right to review and approve applications in their exercise as Governmental Agencies, which shall not be unreasonably withheld. The cost of obtaining any licenses and permits for which the YIDA or the Company is responsible shall be borne by YIDA through the Company.

Subsection 4.1.2. Performance and Payment Bonds; Guaranteed Maximum Price Contracts. During the period of construction and until Final Completion, the Company shall maintain in full force and effect in favor of the Institutional Lender(s) and, subject to the rights of the Institutional Lender(s), in favor of the appropriate City Entity, as joint obligees, payment and performance bonds in an amount equal to the contracted hard costs of

construction of the Project Improvements. The Company shall provide guarantees of completion from the Company and have guaranteed maximum price contracts for the Waterfront Public Improvements delivered at the time of commencement of construction. Substitutions for portions of the foregoing joint obligee payment and performance bonds and guarantees of completion may be made with other forms of assurances in substitution thereof as may reasonably be approved by Corporation Counsel of the City to address Leasehold Mortgagee demands.

Subsection 4.1.3. Signs. Any identification signs for the Premises or any part thereof to be installed and maintained by YIDA, or by the Company, that are visible from outside of the Improvements shall be subject to CDA's prior, reasonable, written approval as to design, size, color, illumination, height, and location. At YIDA's request, CDA shall join in or consent to any application for sign permits for approved signs in conformance with any applicable ordinance of the City under which CDA's consent may be necessary. The provisions of this subsection shall continue to be applicable after completion of the Project Improvements, throughout the Term of this Lease.

Subsection 4.1.4. Easements. CDA shall grant, or use its best efforts to cause the City to grant, easements and other interests and, if necessary, modifying or abandoning such rights-of-way, as may be required to provide the Premises with electric, telephone, gas, water, sewer and other public utilities useful or necessary to the proper construction, economic development and operation of the Project over and across property now owned by CDA or the City, at such locations YIDA may request, subject to CDA's approval, not to be unreasonably withheld. The CDA agrees to use commercially reasonable efforts to have the utility companies remove certain above-ground utility lines and have them installed underground as provided under the Riverview Urban Renewal Plan, provided that the City or CDA shall not be required to pay such utility companies any fees in connection with such removal. New utility lines (but not relocated lines) to be installed as part of the Project shall be installed underground.

Subsection 4.1.5. Legal Requirements. YIDA shall cause the Company to comply with all Requirements of Governmental Agencies applicable to the construction, alteration, maintenance and repair of the Improvements and all parts thereof.

Subsection 4.1.6. Mechanic's Liens.

(a) YIDA shall not permit or consent to the filing or to the continuation after filing, of any mechanics' liens or other similar liens against the Project Improvements or the Premises.

(b) YIDA shall cause the Company to pay all costs incurred in connection with the construction, alteration, maintenance, operation and repair of the Project. If a lien or claim of lien is filed against all or any part of or interest in the Premises by any contractor, subcontractor, mechanic, laborer, materialman or any other Person whomsoever, other than arising from any act or action of CDA, its agents, employees or independent contractors, then the

YIDA shall, within sixty (60) days after notice of such lien or claim of lien, cause the same to be discharged of record; provided, however, that YIDA or the Company shall have the right to contest the amount or validity of any such lien or claim of lien by appropriate proceedings, but in such event, YIDA shall cause the Company to promptly and fully bond such lien by a statutory bond to discharge such lien with a responsible surety company to prevent foreclosure against the Premises under such lien or claim of lien. YIDA shall cause the Company to prosecute such proceedings with due diligence and dispatch. YIDA shall cause the Company to also defend for CDA, at the Company's expense, any action, suit or proceeding which may be brought on or for the enforcement of any such lien and shall pay damages and satisfy and discharge any judgment entered in such action, suit or proceeding and save CDA harmless from any liability, claim or damages resulting therefrom.

Subsection 4.1.7. Modification of Construction Plans.

(a) No changes to the approved Construction Plans materially affecting the elevations of the structures, the footprint of the structures, exterior materials, fenestration, unit mix or density of the Project Improvements shall be made without giving written notice to the CDA Project Manager ("Modifications"). If the Company wishes to make Modifications to the approved Construction Plans or Site Plan, or to change the Construction Agreements in connection with the Modifications ("Change Orders"), YIDA shall submit the proposed Modifications and/or Change Orders to the Planning Department or the Building Department, as the case may be, for review and approval, with copies to the CDA Project Manager. No Modifications or Change Orders for the Waterfront Public Improvements, New Street and/or any other public improvement shall be made without the written approval of the CDA Project Manager. If CDA determines, in its reasonable judgment, that the proposed Modifications or Change Orders for the Waterfront Public Improvements, New Street and/or any other public improvement conform to the requirements of the LDA and this Lease, and are substantially consistent with the approved Site Plan, the Construction Plans and/or the Construction Agreements, CDA shall so notify YIDA, and the plans and agreements for which such Modifications or Change Orders were submitted shall be deemed to incorporate the Modifications that have been approved by CDA, and the Company's obligations under the LDA and this Lease shall be performed in accordance with such plans as so modified. If CDA determines, in its reasonable judgment, that the proposed Modifications or Change Orders are not acceptable, CDA shall so notify YIDA, specifying in reasonable detail in what respects they are not acceptable, and YIDA shall either (i) withdraw the proposed Modifications or Change Orders, in which case, construction of the Improvements shall proceed on the basis of the Construction Plans or Construction Agreements previously approved by CDA, or (ii) revise the proposed Modifications or Change Orders in response to the CDA's objections, and resubmit such Modifications or Change Orders to CDA for review and approval within thirty (30) days after such notification from CDA. Each review by CDA under this subsection shall be carried out within ten (10) business days following the date of submission of the proposed change.

(b) The provisions of this section relating to approval, rejection, and resubmission shall continue to apply until the proposed Modification and/or Change Order has been approved by CDA.

(c) Notwithstanding anything stated or implied herein to the contrary, CDA and YIDA specifically agree, and the Company specifically acknowledges, that CDA's approval in whole or in part, of any plans and specifications and the modification of the Construction Plans shall be deemed to have been given by CDA acting only in its proprietary capacity as owner of the Premises for purposes of this Lease, it being the intention of CDA, the Company and YIDA that the Company shall, to the extent that it has the responsibility to do so as set forth in the LDA, obtain all permits and approvals from the various departments, agencies, bureaus, officers and officials of the City and other Governmental Agencies as may be required for the development of the Premises in accordance with normal municipal procedures applicable to construction in the City.

Subsection 4.1.8. Progress Reports. Commencing with the last business day of the fourth (4th) calendar month after the commencement of construction of the Project, and on the last business day of every third calendar month thereafter until Substantial Completion, YIDA shall cause a written report on the status of the development, construction and marketing activities for the Premises to be submitted to CDA for the preceding three (3) month period (or in the case of the first such report, during the period since the commencement date) and that which the Company intends to accomplish in such areas in the next ensuing three (3) month period. YIDA further agrees to obtain the Company's answers in writing to any reasonable questions CDA may present in writing relating to the foregoing from time to time. CDA and YIDA may agree to limit the number and scope of items covered by the status reports as well as the frequency thereof.

Subsection 4.1.9. Unavoidable Delay. Notwithstanding anything herein to the contrary, the parties shall have the right from time to time to extend the periods set forth above in this Section 4.1 within which construction of the Improvements is to be undertaken and completed if and to the extent the progress of such construction is affected by Unavoidable Delays, provided that (a) the delayed party shall give written notice to the other parties, as more particularly set forth in the definition for Unavoidable Delay in Article 1 hereof, promptly following the occurrence of each such Unavoidable Delay, the extent to which the same is expected to delay progress of any particular items or approvals of construction and the additional period of time (over and above the date specified above for completion of the Improvements) which the delayed party reasonably anticipates will be required by reason of such Unavoidable Delay to complete the Improvements or the approvals in connection therewith, and (b) the delayed party shall use reasonable efforts to resolve such Unavoidable Delay and make up the time lost as a result thereof.

Section 4.2 Construction Obligations Subject to

Arbitration. In the event of any unresolved dispute in connection with the construction of the Project, such disputes will be subject to Article XVII of this Lease.

Section 4.3 Equal Opportunity: Federal, State and

Local Requirements. YIDA shall cause the Company to comply with Section 6.8 of the LDA.

Section 4.4 Construction Coordination. CDA and YIDA agree to cooperate and confer with one another, and to cause their respective architects, project managers, construction managers, contractors and consultants (collectively, "representatives") to do so, in order to facilitate the coordination of the parties' respective construction obligations, in order to permit the parties to carry out their joint obligations hereunder as economically and expeditiously as reasonably possible. Each of the parties to this Lease and the LDA will cause its representatives to attend construction progress and coordination meetings convened by the City.

Section 4.5 Alterations. From and after Final Completion of the Improvements, YIDA shall not permit the Company to demolish, replace, materially change or materially alter the Improvements, or any part thereof, or make any addition thereto (each of which, including any damage restoration to be made pursuant to this Lease, is sometimes hereinafter referred to as an "Alteration"), other than repairs and damage restoration which YIDA is obligated to make hereunder, without CDA's prior written consent in each instance, provided, that no consent, approval or authorization shall be required if such Alteration will not (i) materially affect the exterior appearance of the Improvements, or (ii) involve a material change to permitted uses set forth in Section 5.1 hereof, or (iii) involve noncompliance with any Requirements of Governmental Agencies. The costs of performing any Alteration shall be paid and borne by YIDA through the Company. If CDA's consent is required for a proposed Alteration, it shall not be unreasonably withheld or delayed provided that prior to the commencement of the proposed Alteration, the proposed Alteration complies with all of the applicable requirements set forth in this Lease. If CDA refuses consent to any proposed Alteration for which CDA's approval is required hereunder, the dispute may be submitted to arbitration pursuant to Article XVII of this Lease.

Subsection 4.5.1. Submission of Notice and Plans. YIDA shall not permit any Alterations for which CDA approval is required pursuant to Section 4.5 above, unless the Company delivers to CDA a written notice describing any proposed Alteration accompanied by a complete set of detailed plans and specifications for the Alteration at a level of detail comparable to the Construction Plans, including a detailed timetable for the construction of such Alteration, an estimate of the cost of construction, and all other drawings, specifications and written explanations that CDA may reasonably request. The proposed Alteration shall be deemed approved unless rejection in writing by CDA, in whole or in part, setting forth in detail the reasons therefor, shall be made within twenty (20) days after their receipt by CDA. If CDA's approval is required, such submission shall constitute a necessary part of the request for CDA's approval. If CDA's approval is not required, the submission required by this subsection shall nevertheless be made, prior to commencement of the Alteration, for CDA's information only.

Subsection 4.5.2. Construction Standards; Permits. Any approved Alteration shall be made promptly (subject to Unavoidable Delay) and in a first class, good and workmanlike manner and in accordance with the plans and specifications therefor, and all permits and other Requirements of Governmental Agencies. Before performing any construction work on an Alteration, YIDA shall cause the Company, at its sole cost and expense, to obtain all permits, approvals and certificates required by any governmental or quasi-governmental bodies

and upon completion shall obtain certificates of final approval thereof and shall deliver promptly duplicates of all such permits, approvals and certificates to CDA.

Subsection 4.5.3. Replacements. Nothing set forth above in this Section 4.5 shall be deemed to prevent the Company from removing equipment installed by the Company, for the purpose of replacing the same with equipment of like quality. Replacements of equipment or materials with equipment or materials of like kind or quality shall not be subject to CDA's prior approval hereunder, except that prior to commencing any such replacement that materially changes the exterior appearance of the Improvements, YIDA shall cause the Company to comply with the submission and approval requirements of Subsection 4.5.1 above. CDA shall be deemed to have approved the replacement unless objection thereto in writing is made by CDA within twenty (20) days after receipt by CDA of the submission.

Subsection 4.5.4. Insurance, Liens. The provisions of Section 4.1 above pertaining to liens and the removal thereof, and the provisions of this Lease pertaining to insurance and evidence thereof to be provided by YIDA through the Company in connection with the construction of the Improvements, shall apply also to any Alteration, and evidence of the required insurance reasonably satisfactory to CDA shall be delivered to CDA prior to the commencement of any Alteration.

Subsection 4.5.5. Ownership of Drawings, Specifications and Documents. All architectural and engineering drawings, specifications and documents ("Architectural Materials") prepared in connection with the design, development and construction of the Project shall, subject to any rights of the Institutional Lenders and the Architect in and to the Architectural Materials, be the sole property of the Company; provided, however, that if an uncured Event of Default occurs under this Lease and this Lease is terminated by CDA prior to the Substantial Completion Date, the Company's rights in and to the Architectural Materials for the portion of the Project not then Substantially Completed shall be deemed to be assigned by the Company to the CDA, subject to the continuing rights of Institutional Lenders and the Architect, and to the right of the Company to be compensated by any successor private redeveloper(s) for the use of such Architectural Materials.

ARTICLE V

USES AND RELATED COVENANTS

Section 5.1 Permitted Uses. Throughout the Term, YIDA shall not use or allow the use of the Premises for speculation or any purpose other than the development, construction and operation of the Premises with the following Improvements:

- A building having two (2) twenty-five (25) story high towers and a five (5) story wing, containing in the aggregate approximately 436 dwelling units and approximately 8,700 square feet of retail and/or professional

office space.

Two (2) parking structures within the building containing approximately 670 private parking spaces, of which 184 parking spaces shall be constructed exclusively for residents of the Scrimshaw House condominium (such 184 spaces, the "Scrimshaw House Parking Facility"), thereby satisfying the obligation of the CDA pursuant to a certain Agreement of Lease dated as of January 31, 2001 between the CDA, as lessor, and The Board of Managers of Pierpointe on the Hudson Condominium I, as lessee(the "Scrimshaw House Parking Lease"). The Scrimshaw House Parking Facility shall be owned by the Company. The Company, or its designee, shall be liable for the costs of construction of the Scrimshaw House Parking Facility. The Company shall be entitled to all parking revenues generated by the Scrimshaw House Parking Facility, including revenues generated under the Scrimshaw House Parking Lease. Upon Substantial Completion of the Scrimshaw House Parking Facility, the CDA shall assign the Scrimshaw House Parking Lease to the Company.

- Approximately fifty seven (57) public parking spaces located at-grade between the towers and in a parking lot located in the southern portion of the Premises.
- Approximately____ square feet of landscaped open space one the Premises (the "Palisades Point Open Space"). The Palisades Point Open Space shall be privately owned, but publicly accessible. The parties agree that the City and the Company shall enter into an easement agreement in form reasonably acceptable to City Corporation Counsel pursuant to which an easement of public access to, and use of, the Palisades Point Open Space is granted, subject to the conditions and restrictions that are set forth in the agreement, it being the intent of the parties that, among other things, the use and operation of the Palisades Point Open Space shall be subject to reasonable limitations consistent with private ownership and the operation of the building, and that the Palisades Point Open Space shall not be deemed to be public land or a public park for any purpose.
- A new street (the "New Street") that connects to and extends Water Grant Street south through the Premises along the Metro-North Railroad tracks. YIDA shall cause the Company to offer New Street for dedication as a City public street and shall provide vehicular access to the property owned by American Sugar Refining, Inc. (the "Sugar Refinery Property") due south of and adjacent to the Premises. The parties acknowledge that the Sugar Refinery Property is currently benefited by an easement (the "Sugar Refinery Easement") for vehicular access over the Premises.

The Project also includes: (i) expansion of the existing City park known as Hudson Park (also known as the "sculpture park"); (ii) the construction by the Company as agent of the Yonkers Economic Development

Corporation on the Retained Unit adjoining the Premises of (x) a waterfront promenade and related shoreline improvements as shown on the Site Plan (the "Waterfront Public Improvements"), and (y) if required under Section 4.1 of this Lease, the Temporary Esplanade Improvements.

- . Notwithstanding anything to the contrary in the LDA or this Lease: (i) if for any reason the Waterfront Public Improvements have not been commenced within two years of the Commencement Date of this Lease, the Company shall, as soon as practicable thereafter, construct the Temporary Esplanade Improvements and in accordance with and as shown on the plan attached hereto as Exhibit [__]; and (ii) SFC or the company, as agent of the Yonkers Economic Development Corporation, shall construct and complete the Waterfront Public Improvements at such time as at least one of the two towers of the Project is substantially completed.

Section 5.2. Other Requirements. Nothing contained in this Article V shall be deemed to relieve YIDA from compliance with any requirements or restrictions of the Zoning Ordinance or of the Site Plan or any other Governmental Approvals, including but not limited to the Planned Urban Redevelopment approval for the redevelopment of the Premises, or any requirements or restrictions set forth in the zoning variances, special use exception permit, site plan approval and related environmental findings made pursuant to the SEQRA, with respect to the redevelopment or use of the Premises.

Section 5.3. Compliance with Laws. YIDA shall cause the Company to obey, perform and comply with any and all Requirements of Governmental Agencies existing at any time during the Term in any way affecting the Premises, or the use or condition of the Premises, including the construction, operation, alteration or demolition of the Improvements or in any other way affecting this Lease. The Company shall have the right to contest in good faith the validity of any such Requirements of Governmental Agencies by appropriate legal proceedings, unless such proceedings shall operate to cause the sale of the Premises or any part thereof, or the placing of any lien thereon or the imposition of fines or other civil or criminal liability prior to the final determination of such proceedings. YIDA shall cause the Company, at its own expense, to obtain any and all licenses and permits necessary for its use of the Premises. CDA shall join in the applications for any such licenses and permits and otherwise cooperate as necessary to comply with the Requirements of Governmental Agencies where the signature of CDA as owner of the Premises is required.

Section 5.4 Maintenance. YIDA shall cause the Company to maintain the Premises in good, sound and safe condition and repair and slightly in appearance. Necessary repairs, maintenance and upkeep will be performed so as to preserve the attractive appearance, the physical integrity and the sanitary and safe condition of the Project Improvements . CDA shall not have any responsibility for the maintenance or repair of the Premises. If the Company fails to commence to cure a default in such repairs, maintenance and upkeep within thirty (30) days after receiving written notice from CDA specifying what repairs, maintenance and upkeep must be carried out, YIDA agrees and the Company acknowledges, that the necessary repairs,

maintenance and upkeep may be performed by the City or CDA at the expense of the Company, from time to time, in keeping with this covenant. Notwithstanding the foregoing, if the nature of the repairs, maintenance and upkeep is such that it cannot be completed within a thirty (30) day period, YIDA and the Company shall have a reasonable period of time, based upon commercially reasonable standards, in which to complete same. Notwithstanding the foregoing or anything in this Lease to the contrary, if fee title of the Premises is conveyed to the Company subject to this Lease, the rights of the City or CDA under this Section 5.4 and Section 5.6 below shall not apply after Final Completion, except that the rights of the City to enforce safety, health and welfare regulations at the Premises shall not be affected in any way.

Section 5.5 Vacant Parcels. All vacant parcels subject to this Lease or portions thereof which are not being disturbed for the construction of the Project, if any, shall at all times be kept and maintained in good, sound and safe condition and appearance and accordance with any and all applicable property maintenance laws and regulations of the City.

Section 5.6 Landscaped Areas. YIDA shall cause the area, if any, of the Premises not occupied by structures, vehicular driveways or pedestrian walks, to be kept planted with grass, trees and plants or shrubbery in accordance with the Site Plan and maintained in a healthy condition and neat appearance. Upon thirty days' prior written notice to cure, if there is a default in such planting or in its maintenance, YIDA agrees, and the Company acknowledges, that the necessary planting and work may be done by CDA or the City at the expense of the Company, from time to time and in keeping with this covenant. Notwithstanding the foregoing, if the nature of the landscape work is such that it cannot be completed within a thirty (30) day period, YIDA and the Company shall have a reasonable period of time, based upon commercially reasonable standards, in which to complete same.

ARTICLE VI

IMPOSITIONS

Section 6.1 Utility Charges. At all times during the Term, YIDA shall pay or cause to be paid any and all charges for water, electricity, gas, sewage, waste, trash and garbage disposal, telephone and other utility services furnished to the Premises or the Improvements, it being agreed that charges for any of such services that are provided by the City of Yonkers or by any of its agencies or departments, or by any special district, shall be at normal rates prevailing within the City of Yonkers or the applicable service area.

Section 6.2 Taxes.

Subsection 6.2.1. Inclusions. YIDA shall cause the Company to pay to the appropriate taxing authority all taxes, general and special assessments and other public charges

of every description, including any special assessments (collectively called the "Taxes"), that may be levied on or assessed against the Premises, any personal property located on the Premises, the Leasehold and any subleasehold estate created by any sublease, that are attributable to the Term. YIDA shall pay or cause the Company and its subtenants to pay the Taxes, or any installment of the Taxes if permitted to be paid in installments, on or before the day on which any interest or penalty is imposed upon such payment whether belonging to or chargeable against CDA or YIDA. In addition, if, at any time during the Term, the Premises are assessed and taxed by the appropriate taxing authority at a rate of less than One Hundred percent (100%) of their total value pursuant to any present or future provision of state law relating to the taxation of leaseholds, YIDA shall cause the Company to pay to CDA, subject to any exemption or abatement of real estate taxes to which YIDA is expressly entitled under this Lease, an amount in lieu of real estate taxes equal to the difference between (i) the amount actually assessed by and payable to the appropriate taxing authority and (ii) the amount that would have been payable at full assessment, as and when such real estate taxes are due under applicable law, such payment to be made together with the monthly installment of Annual Rent next falling due hereunder.

Subsection 6.2.2. Exclusions. The Company shall not be required to pay and the term "Taxes" shall not include any income, estate, gift, inheritance, transfer capital levy tax, or franchise or profits tax that may be payable by CDA. However, if taxes are expressly imposed on the Rent in lieu of all or part of the Taxes on the Premises, and the purpose of the new tax is more closely akin to that of an ad valorem tax or use tax than to an income or franchise tax on CDA's income, then the Company shall pay such substitute taxes as part of the Taxes payable under this Lease.

Subsection 6.2.3. Exemption. Notwithstanding anything to the contrary set forth above in this Section 6.2, the Company shall be entitled to receive the benefits of tax reduction under Section 485-e of the Real Property Tax Law as applied under the City's Economic Development Zone program. CDA shall use its good offices and cooperate with YIDA and the Company to facilitate an application to the City for such benefits, and, if necessary to accomplish the purposes of this subsection, join with YIDA and the Company in making any such application.

Subsection 6.2.4. Financial Benefits through Yonkers Industrial Development Agency; Business Improvement District The parties acknowledge and agree that notwithstanding Subsection 6.2.1 and anything in this Lease to the contrary:

(a) By entering into the Sublease and a certain Full Tax Agreement with SFC, dated _____ (the "FTA"), YIDA has conferred on the Company the following development incentive benefits: (i) a sales tax exemption for purchases related to the acquisition of the Premises and the construction and equipping of the Improvements on the Premises; (ii) a mortgage recording tax exemption; and (iii) exemption from real estate taxes and in lieu thereof a payment-in-lieu- of tax formula, as set forth in the FTA .

(b) The Premises is situated in a Business Improvement District ("BID") established under Article 19-A of the General Municipal Law and the Premises is directly benefited from being in such BID. Notwithstanding the exemptions set forth in this

subsection, upon Substantial Completion of the Improvements, YIDA shall cause the Company to pay all BID fees on the same basis as any other property owner in the BID, and such BID fees shall be deemed special assessments irrespective of whether the Improvements are exempt from the payment of real estate taxes.

Subsection 6.2.5. Tax Bills. CDA shall deliver to the Company all tax bills at least thirty (30) days before the due date of any installment, unless such bills are delivered directly to YIDA or the Company by the appropriate authorities. Upon receipt of a notice from CDA requesting same, YIDA shall cause the Company to deliver to CDA receipts indicating payment, the certification of the Company's controller, or other satisfactory proof of payment of any taxes required theretofore to have been paid as provided in this Section 6.2.

Subsection 6.2.6. Contests. During the term of the FTA, the Company may not contest any assessment or the imposition of any Tax against the Premises, except as otherwise provided in the FTA.

Section 6.3 Failure to Make Payments. If YIDA or the Company fail to pay as and when due any Impositions, insurance premiums on any policy required to be maintained by the Company under this Lease, or any other charges, costs or expenses required to be paid under this Lease, then CDA shall have the right, but not the obligation, to make all such payments. CDA shall have the option of requiring YIDA to repay CDA the amount of such payments on demand or treat the amount of such payments as Additional Rent to be paid on the next day for the payment of Rent. If YIDA does not make such payment, then CDA shall have the same rights and remedies with respect to such Additional Rent as CDA has under this Lease, including but not limited to the provisions set forth in Section 13.1(b) of this Lease, for the nonpayment of Rent, including interest thereon. Payment of any such amounts by CDA shall not be deemed a waiver of any of its rights under Article XIII of this Lease.

ARTICLE VII

LEASEHOLD MORTGAGES

Section 7.1 Mortgages of Leasehold Estate.

(a) Each of YIDA and the Company shall have the right, from time to time during the Term, to encumber its Leasehold Estate hereunder or under the Sublease by granting to an Institutional Lender(s) one or more Mortgages covering the estate and rights of, YIDA in this Lease or the Company in the Sublease, in the Project Improvements, and costs incurred by SFC through the Commencement Date of this Lease in connection with the Project Improvements and other redevelopment projects described in the LDA and CDA shall execute such financing documents relating to each Leasehold Mortgage (the "Financing Documents") to the extent the documents require that CDA execute Financing Documents relating to each

Leasehold Mortgage, as long as the Financing Documents are consistent with the terms of this Article VII, and provided that the Financing Documents shall not impose any economic or financial liability, risk or exposure to CDA. Any Leasehold Mortgage as described above shall be limited to the purpose of providing security to an Institutional Lender for loan financing to be used or applied only in connection with the development and construction of the Improvements on the Premises including without limitation, loan fees, construction costs, interest, consultant expense, fees and other soft costs paid to third parties in connection with construction of the Improvements and for no other purpose or property. In the event of any inconsistency relating to the rights of Leasehold Mortgagees between the provisions of this Article VII and other provisions of this Lease, then the provisions of this Article VII shall control.

(b) Neither YIDA nor the Company shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien covering the estate, interest or rights of CDA in all or any part of the Premises, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to CDA's estate, interest or rights in the Premises or any part thereof.

Section 7.2 CDA's Notices of Default; Cure by Mortgagee.

CDA agrees to give to each Leasehold Mortgagee of which YIDA or the Company shall have given CDA notice as provided herein, at the address of such Leasehold Mortgagee as set forth in such notice, or at such other address as such Leasehold Mortgagee may subsequently designate in the manner provided in Article 22 of this Lease, a copy of each notice of an Event of Default ("Notice of Default") given by CDA to YIDA or the Company at the same time such Notice of Default shall be given to YIDA or the Company, and no such Notice of Default shall be deemed to have been duly given to YIDA or the Company unless and until a copy thereof shall have been so given to such Leasehold Mortgagee.

Subsection 7.2.1. Cure by Mortgagee. After a Notice of Default shall have been given to YIDA or the Company, each Leasehold Mortgagee shall, in the first instance, have the same time periods for cure and the same rights to cure, but not the obligation to cure, as are provided to YIDA or the Company to remedy or cause to be remedied the Event(s) of default which are the subject matter of such notice (it being understood that such period for cure shall run concurrently). CDA agrees to accept performance by any Leasehold Mortgagee of any covenant, condition or agreement on YIDA's or the Company's part to be performed hereunder with the same force and effect as though performed by YIDA or the Company, it being clearly understood and agreed, however, that the right of any Leasehold Mortgagee to cure is subordinate to YIDA's or the Company's primary right to cure any default or Event of Default. YIDA and the Company authorize any Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and the Leasehold Mortgagee is hereby authorized to enter on the Premises for such purpose. CDA's giving of notice to each Leasehold Mortgagee under the provisions of this Subsection 7.2.1 shall not preclude CDA from giving any subsequent Notice of Default to YIDA or the Company which is required or permitted to be given pursuant to Article XIII of this Lease, provided, however, that upon giving any subsequent Notice of Default to YIDA or the Company, CDA shall simultaneously provide a copy of such notice to each Leasehold Mortgagee, as set forth above.

Subsection 7.2.2. Mortgagee's Additional Opportunity to Cure. Upon the expiration of the cure period set forth in CDA's Notice of Default, in the event a cure has not been effected, CDA shall give a second Notice of Default to each Leasehold Mortgagee (the "Mortgagee Notice of Default") which shall set forth the nature of the default or Event of Default not cured and shall state the period which each Leasehold Mortgagee has to cure such default which period, notwithstanding any other provisions in this Article VII or in any other provision of this Lease and the LDA, shall be the same period granted to YIDA and the Company in the original Notice of Default (but shall be after the expiration of the initial cure period referred to in subsection 7.2.1 above).

Subsection 7.2.3. Completion of Construction. Notwithstanding anything to the contrary set forth in this Article VII or in any other provision of this Lease and the LDA, and in addition to and without limitation of any other requirements or conditions applicable to cure set forth in this Lease, if the breach or default that the Leasehold Mortgagee proposes to cure is with respect to the construction of the Project Improvements, the Leasehold Mortgagee shall not have the right, either before or after foreclosure or action in lieu of foreclosure, to undertake or continue the construction or completion of the Project Improvements (beyond the extent necessary to conserve or protect Project Improvements or construction already made) without first having expressly assumed the obligation to CDA, by written agreement mutually satisfactory to CDA and the Leasehold Mortgagee, to complete the Project Improvements in the manner provided in this Lease and in the LDA, within the revised time schedule set forth in such written agreement between CDA and the Leasehold Mortgagee; provided that such agreement shall not materially alter the scope of the Project or impose any different or additional obligations on the Leasehold Mortgagee with respect to the Project Improvements than already imposed on the Company under this Lease.

Section 7.3 Adjournment of Termination by CDA. Anything contained in this Lease to the contrary notwithstanding, if an Event of Default shall occur, (and YIDA, the Company and/or the Leasehold Mortgagee shall not have cured pursuant to Article XIII or Section 7.2 hereof, as the case may be), CDA shall have no right to terminate this Lease unless, simultaneously with CDA's delivery to YIDA of the Termination Notice provided in Section 13.2 below, CDA shall submit to each Leasehold Mortgagee who shall become entitled to notice as provided in Section 7.1 above, a separate notice of termination (the "Mortgagee Notice of Termination"), which notice shall contain a statement of all then existing defaults and Events of Default and shall set forth as the date for the termination of this Lease (the "Termination Date") the Termination Date specified in Termination Notice delivered to YIDA which shall be at least ninety (90) days after the date of the Mortgagee Notice of Termination. Each Leasehold Mortgagee shall in such circumstance have the right, exercisable by notice to CDA from any Leasehold Mortgagee prior to the Termination Date (the "Adjournment Notice"), to adjourn the Termination Date, provided that any such Leasehold Mortgagee shall, in such Adjournment Notice, agree that it will, promptly after the date of the Adjournment Notice (the "Initial Cure Period"):

(a) Cure all defaults and Events of Default specified in such Mortgagee Notice of Termination (including, without limitation, all obligations to pay sums of money) to the extent they are capable of being cured by such Leasehold Mortgagee within the Initial Cure Period and

diligently pursue efforts to cure any other default or Event of Default not capable of being cured within such Initial Cure Period;

(b) At such Leasehold Mortgagee's option, in good faith, acquire, or initiate and diligently pursue steps to acquire YIDA's interest in this Lease, the Company's interest in the LDA and the Sublease by foreclosure of such Leasehold Mortgages or otherwise, and to exercise the Company's right to purchase under the LDA and as more particularly set forth in Article XII hereof; and

(c) In the event such Leasehold Mortgagee determines to acquire YIDA's or the Company's interest, promptly upon obtaining possession of the Premises, commence to cure and diligently prosecute and complete the curing of all defaults and Events of Default specified in such Mortgagee Notice of Termination which were not capable of being cured within the Initial Cure Period. CDA agrees to cooperate in the removal of YIDA or the Company from the Premises, but only upon the written request and at the expense of such Leasehold Mortgagee.

Section 7.4 Revocation of Termination Notice. If, by the Termination Date (as extended by the Adjournment Notice) (a) the obligations of the Leasehold Mortgagee contained in any Adjournment Notice shall have been fully performed and satisfied, except those that cannot be satisfied and fully performed by the Termination Date (in which latter event the Leasehold Mortgagee is diligently pursuing efforts to perform such obligations), (b) the Leasehold Mortgagee(s) or approved Transferee (as hereinafter defined) if it shall have taken over possession as aforesaid shall have assumed and agreed in writing, for the benefit of CDA, to perform all of the terms, covenants and conditions of this Lease to be observed and performed by YIDA and/or the Company, or shall have executed a new lease or sublease in form and substance identical hereto and new Sublease except for such change in the identity of the YIDA and/or the Company, and (c) all other obligations on YIDA's and/or the Company's part to be performed hereunder through such adjourned Termination Date shall have been performed and no further Event of Default shall have occurred hereunder which shall not have been cured within the applicable grace period provided for herein, except those not capable of being performed or cured within such time, in which event YIDA or the Company will have commenced and diligently pursued the curing of such default, and so long as such diligent efforts continue then and in such event the defaults and Events of Default set forth in the Mortgagee Notice of Termination shall be deemed to have been cured (or, in the case of a default, such as the bankruptcy of the Company, or failure to meet a time deadline which could not be cured by the Leasehold Mortgagees, shall be deemed to have been waived), the Termination Notice shall be deemed to have been revoked and of no effect, and this Lease shall continue in effect for the balance of the Term. It is expressly understood and agreed that any Leasehold Mortgagee can cure any default or any Event of Default, and CDA is obligated to accept such cure in accordance with the terms of this Lease.

Subsection 7.4.1. Reinstatement of YIDA or the Company. Notwithstanding anything to the contrary in this Article VII, in the event of a default or an Event of Default which has not been cured by the YIDA or the Company and a Termination Notice and a Mortgagee Notice of Termination have been issued, and where Leasehold Mortgagee has given an Adjournment Notice and has cured or is proceeding with a cure, then the curing Leasehold Mortgagee shall have the right within ninety (90) days of the Adjournment Notice to notify CDA

that, for this Event of Default, it elects not to remove YIDA or the Company or it requires CDA to reinstate YIDA as the tenant under this Lease and/or the Company under the Sublease subject to the default being timely cured pursuant to this Article VII.

Subsection 7.4.2. Effects of Cure or Failure to Cure. In the event of a cure, the CDA will execute and deliver to YIDA and the Company and to the Leasehold Mortgagee a certificate stating that such Event of Default has been cured and that this Lease remains in full force and effect. If the Leasehold Mortgagee shall not have complied with all of the foregoing requirements of this Section 7.4 by the adjourned Termination Date unless such default is not capable of a cure by such date, then this Lease and the Term and all rights of YIDA, the Company and the Leasehold Mortgagee and all Persons claiming by, through or under them shall automatically expire and terminate on the Termination Date as if such date were the date herein definitely fixed for the expiration of the Term, and YIDA, the Company and/or the Leasehold Mortgagee shall immediately quit and surrender to CDA the Premises and the Project Improvements. However, in the event such default is not capable of cure by the adjourned Termination Date, the adjourned Termination Date will be further extended so long as YIDA's or the Company's Leasehold Mortgagee's efforts to cure are being diligently pursued.

Section 7.5 Permitted Transferee. Except as otherwise set forth in Section 7.4 above and Subsection 7.5.2 below, CDA shall have the right to reasonably approve (such approval to be subject to the limitations set forth in Sections 11.2.2), in accordance with the provisions of Subsection 7.5.1 below, any purchaser of or successor to YIDA's interest in this Lease, the Company's interest in the Sublease, the Improvements and the Equipment in any foreclosure proceeding, under any deed, assignment or other instrument delivered in lieu of such foreclosure (any such purchaser, successor, assignee or transferee other than a Leasehold Mortgagee being hereinafter referred to as a "Transferee"). Notwithstanding anything in this Lease or the LDA to the contrary, a Transferee shall be subject to all of the terms, conditions and provisions of this Lease; provided, however, that the time period within which a Transferee is required to complete construction of the Project shall be extended to the date which is twelve (12) months after the Substantial Completion Date.

Subsection 7.5.1. CDA's Approval. Leasehold Mortgagee shall submit to CDA, for its approval, the name of any proposed Transferees, together with such details of such proposed Transferees' character, experience and financial position, as well as schedules of their respective principals, owners and affiliates, as CDA shall reasonably request and is available to Leasehold Mortgagee. CDA shall advise such Leasehold Mortgagee of CDA's approval or disapproval of each such proposed Transferee within ten (10) days after CDA's receipt of the Leasehold Mortgagee's request for such approval; if CDA reasonably disapproves (according to the standards set forth in Section 11.2.2 hereof) a proposed Transferee submitted by the Leasehold Mortgagee, CDA shall specify in any notice of disapproval the specific reasons for its disapproval, and the Leasehold Mortgagee shall have three (3) months from the date of CDA's notice of disapproval to Leasehold Mortgagee within which to submit the name of one or more alternate proposed Transferees for each Transferee disapproved by CDA, together with the background materials and information required above for the initial proposed Transferees. CDA will then have an additional thirty (30) day period within which to approve or disapprove such alternate Transferee(s). In the event CDA disapproves such alternate proposed Transferees, the

parties herein agree that one or more acceptable Transferees shall be chosen by arbitration pursuant to the provisions of Article XVII of this Lease.

Subsection 7.5.2. Applicability to Mortgagee. The requirements of prior consent and requests for approval set forth in Section 7.5 and Subsection 7.5.1 above shall not apply to the foreclosure of, purchase of, assignment of or succession to YIDA's interest in this Lease and the Premises by a Leasehold Mortgagee (or its subsidiary or affiliate) taking over possession in connection with a default by the Company under the loan documents pertaining to the Leasehold Mortgage (Leasehold Mortgagee shall deliver to CDA a copy of its default notice to Tenant or the Company, if any; provided that failure to do so shall not be an Event of Default under this Lease).

Section 7.6 Amendments of Lease. In the event that a Leasehold Mortgagee shall acquire or succeed to YIDA's interest in this Lease and the Premises pursuant to the foregoing provisions of this Article, such Leasehold Mortgagee shall not be bound by any modification or amendment of this Lease made prior to its acquisition of such interests and after the date of the respective Leasehold Mortgage unless such Leasehold Mortgagee shall have consented in writing to such modification or amendment at (or after) the time it was made or at the time of such acquisition.

Without the prior written consent of the Leasehold Mortgagee, CDA, YIDA and the Company shall not enter into any agreement modifying or amending this Lease or the Sublease or any term or condition of this Lease or the Sublease. No amendment or modification of this Lease or the Sublease shall be effective until CDA receives the written consent of the Leasehold Mortgagee. Without the prior written consent of each Leasehold Mortgagee, CDA shall not accept any voluntary surrender of this Lease and YIDA shall not accept any voluntary surrender of the Sublease. No voluntary surrender of this Lease or the Sublease shall be effective unless and until CDA receives the written consent of each Leasehold Mortgagee.

The parties agree to make such amendments to this Lease as Leasehold Mortgagees may from time to time reasonably request, provided that no such amendment shall subject the CDA to any liability or obligation not otherwise provided for in this Lease or be materially inconsistent with any term or provision of this Lease. Any amendment requested to extend the term of this Lease beyond 49 years shall be subject to the requirement that construction of the Project has commenced and any other reasonable requirements that the Board of Directors of CDA may approve.

Section 7.7 New Lease. Upon written request made by any Leasehold Mortgagee at any time after the acquisition of or succession to YIDA's interest in this Lease or the Company's interest in the Sublease by a Leasehold Mortgagee or any Transferee approved by CDA pursuant to the foregoing provisions of this Article, CDA shall enter into a new lease of the Premises with such Leasehold Mortgagee or such approved Transferee for the remainder of the Term, upon all of the covenants, conditions, limitations and agreements herein contained, at which time (in the case of execution of a new lease with an approved Transferee) the Leasehold Mortgagee so transferring to such Transferee shall be relieved of all obligations under this Lease, provided that the new tenant or subtenant (i) shall pay to CDA, simultaneously with its execution and delivery of such new lease, all reasonable

expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by CDA in connection with the preparation of and CDA's entry into such new lease, (ii) shall simultaneously with its execution and delivery of such new lease, cause this Lease and the memorandum of this Lease and, as CDA may reasonably request, any other recorded or unrecorded documents executed by and between CDA and any tenant hereunder to be terminated or satisfied in fact and/or of record, and (iii) shall deliver to CDA such evidence as CDA shall reasonably require evidencing the agreement of appropriate parties under any then existing Construction Agreements and Financing Documents to recognize such new lease and new tenant and to complete performance under their respective agreements, it being understood and agreed that the approved Transferee shall have the right to enter into agreements or modifications of the existing agreements not inconsistent with the terms of this Lease. To the extent that CDA had the right hereunder or under the LDA to approve Construction Agreements and Financing Documents or Financing Commitments, CDA shall have the right to review any modifications of such documents, and such consent shall not unreasonably be withheld or delayed. Nothing herein contained shall be deemed to impose any obligation on the part of CDA to deliver physical possession of the Premises to the new tenant unless CDA at the time of the execution and delivery of such new lease shall have obtained physical possession thereof. It is understood and agreed that in the event that any Leasehold Mortgagee shall become the tenant hereunder, the Leasehold Mortgage shall not merge with said mortgagee's interest in the Leasehold, but shall remain separate and apart from the Leasehold. Upon the execution of such new lease, the tenant named therein shall be entitled to any rent received under any sublease in effect during the period from the date of termination of this Lease to the date of execution of such new lease. Effective upon the commencement of the term of any new lease all subleases shall be assigned and transferred to the tenant under the new lease without recourse to CDA. If more than one Leasehold Mortgagee makes written request upon CDA in accordance with the provisions of this Section, the new lease shall be executed with the Leasehold Mortgagee prior in lien, and the written request of any other Leasehold Mortgagee shall be void and of no force or effect.

Section 7.8 Arbitration Proceedings. CDA and YIDA agree that, following notice to it of the creation of a Leasehold Mortgage as aforesaid, CDA shall give notice to each Leasehold Mortgagee entitled to notice as provided in Section 7.1 above of any demand by CDA for any arbitration, and that CDA shall recognize any Leasehold Mortgagee as a proper party to participate in such arbitration. In the event that YIDA fails to designate YIDA's arbitrator, CDA shall give notice of same to the Leasehold Mortgagee and the Leasehold Mortgagee shall be afforded ten (10) days from the date on which YIDA's time to designate such arbitrator shall have expired to do so.

Section 7.9 Required Mortgage Provisions. Each Leasehold Mortgage shall contain provisions substantially similar to the following:

(a) "This mortgage and the rights of the mortgagee hereunder, are limited to YIDA's leasehold estate and the Company's subleasehold estate, and the fee interest owned by CDA is not subordinate to such mortgage; this mortgage encumbers only YIDA's and the Company's interest in the leasehold estate. This mortgage does not encumber CDA's fee title interest in the Premises or the interest of CDA, as landlord, in such lease. The holder of this mortgage agrees from time to time within thirty (30) days after request therefor and without charge, to execute, acknowledge and deliver such instruments reasonably requested by CDA

under the lease hereby mortgaged to evidence the foregoing agreement, provided that any such instrument shall be in form and substance satisfactory to the holder of this mortgage."

(b) "Until such time as a Certificate of Completion is issued with respect to the property subject to this mortgage, this mortgage is subject to all of the provisions of that certain Land Disposition Agreement dated as of _____, 2009 (the "Agreement"), and any and all other agreements by and among the Yonkers Community Development Agency, the City of Yonkers, the City of Yonkers Industrial Development Agency, New Main Street Development Corporation, Yonkers Economic Development Corporation and Struever Fidelco Cappelli LLC, as the same may be amended in accordance with the terms thereof. In the event that the mortgagee becomes the owner of the property subject to this mortgage or any part thereof either through an action to foreclose the mortgage or a deed in lieu thereof, or by any other mechanism, then the mortgagee or any permitted successor or assignee, shall be subject to all of the terms, covenants, restrictions and provisions contained in the Agreement."

Section 7.10 Lender Consortium. Anything to the contrary in Section 7.1 above notwithstanding, YIDA or the Company shall have the right to make with a consortium of lenders ("Consortium") any Leasehold Mortgage permitted by this Article to be made with one or more Institutional Lenders and lenders other than Institutional Lenders, provided that:

(a) The individual lender selected to administer the loan for the Consortium shall be a Lead Lender;

(b) The lenders shall include one or more Institutional Lenders (including the Lead Lender) ;

(c) YIDA or the Company shall have delivered to CDA, if permitted by the lenders, a duly executed duplicate original of an agreement among the Lead Lender and all of the other lenders participating in the Consortium (all of which lenders, including the Lead Lender, are hereinafter collectively referred to as the "Participating Lenders"), appointing and authorizing the Lead Lender to take all action as agent, on behalf of all of the Participating Lenders, and to exercise any and all rights and remedies of the Participating Lenders under such Leasehold Mortgage and this Lease, including, without limitation, to give and receive all notices (including, without limitation, any and all Notices given or required to be given by CDA under this Lease), reports, requests, consents and submissions to act as agent for service of process, to make advances and demands and to exercise discretion and all options, elections and remedies thereunder and hereunder; and

(d) CDA shall be entitled to rely upon notices given and actions taken by the Lead Lender as notices from and actions by all of the Participating Lenders. Any failure by the Lead Lender to exercise any right or remedy or take any other action shall constitute a waiver by the Participating Lenders of the right to exercise any such right or remedy or to take any such action. CDA shall not be liable to, or otherwise responsible for, any failure of the Lead Lender to act in

accordance with the wishes of any or all of the other Participating Lenders or in accordance with any agreement between the Lead Lender and any one or more of the other Participating Lenders.

Section 7.11 Cooperation by CDA. CDA agrees to cooperate in the execution of any documents or instruments necessary for the financing of this Lease provided that CDA shall have the absolute right to approve or disapprove any document which subjects CDA to any liability not otherwise provided for in this Lease, is inconsistent with resolutions adopted by CDA or the City Council of the City of Yonkers or alters or changes in any manner whatsoever the rights or duties of the parties hereto.

Section 7.12 No Merger of Lease in Fee. So long as any Leasehold Mortgage is in existence and until Final Completion of the Project Improvements, CDA's fee title to the Premises and the Leasehold Estate of YIDA created by this Lease and the subleasehold estate of the Company shall not merge, but shall remain separate and distinct, notwithstanding the acquisition of both fee title to the Premises and the Leasehold Estate by CDA or the Company. CDA's termination of this Lease in accordance with the rights and remedies granted to CDA in this Article VII and elsewhere in this Lease shall not be deemed to be a merger for the purposes of this subsection. Notwithstanding the foregoing or anything to the contrary in this Lease, the Sublease or the LDA, neither the YIDA nor the Company shall be obligated to pay Rent after the transfer to the Company of fee title to the Premises.

Section 7.13 Exclusion of Certain Conditions. Nothing contained herein shall require any Leasehold Mortgagee or its designee, as a condition to its exercise of any of its rights under this Article VII:

(a) to cure any default of YIDA or the Company not reasonably susceptible of being cured by any person or entity other than YIDA or the Company; or

(b) to cure or commence to cure any Event of Default consisting of YIDA's or the Company's failure to satisfy or discharge any lien, charge or encumbrance against YIDA's interest in this Lease or the Premises which is junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee (provided that such junior lien is not a lien on the fee estate in the Premises).

Section 7.14 Effect of Transfer; Limitation of Liability. For purposes of this Lease, a transfer of this Lease by way of foreclosure or in lieu of foreclosure shall not constitute an assignment of this Lease requiring CDA's consent nor shall it constitute an Event of Default. A Leasehold Mortgagee, as such, shall not be deemed to be an assignee or transferee of this Lease or of the Leasehold Estate so as to require such Leasehold Mortgagee to assume the performance of any of the terms, covenants and conditions on the part of YIDA to be performed hereunder. Notwithstanding anything to the contrary contained in this Lease, the liability of any Leasehold Mortgagee, its successors and assigns, shall be limited in all respects to its interest in this Lease and the Leasehold Estate created hereby. Neither the Leasehold Mortgagee, its successors or assigns, nor any agents, partners, officers, trustees, directors, shareholder or principals (disclosed or undisclosed) of such

Leasehold Mortgagee, shall have any personal liability hereunder and no judgment or decree that shall be enforceable beyond the interest of the Leasehold Mortgagee, or its successors or assigns, in the Leasehold Estate created under this Lease shall be sought or entered in any action or proceeding brought on account of or in connection with any default in the keeping, observance or performance of any covenant, agreement, term or condition of this Lease. The purchaser at any sale of this Lease and of the Leasehold Estate in any proceedings for foreclosure of any Leasehold Mortgage, or the assignee or transferee of this Lease and of the Leasehold Estate under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage shall be deemed to be an assignee or transferee within the meaning of Article XI of this Lease and shall be deemed (a) to have agreed to perform all of the terms, covenants and conditions on the part of YIDA and the Company to be performed hereunder which arise or accrue from and after the date of such purchase or transfer; and (b) to cure all existing defaults of YIDA under this Lease and of the Company under the Sublease, other than those defaults which are not reasonably susceptible of being cured by any person or entity other than YIDA or the Company; but the liability of any such purchaser or transferee shall be limited in all respects to its interest in this Lease and the Leasehold Estate created hereby, and neither such purchaser or transferee, its successors or assigns, nor any agents, partners, officers, directors, shareholders or principals (disclosed or undisclosed) of such purchaser or transferee, its successors or assigns shall have any personal liability hereunder and no judgment or decree that shall be enforceable beyond the interest of such purchaser or transferee in the Leasehold Estate created under this Lease shall be sought or entered in any action or proceeding brought on account of any default in the keeping, observance or performance of any covenant, agreement, term, provision or condition of this Lease.

Section 7.15 Confirmatory Agreement. CDA shall, upon request, execute, acknowledge and deliver to each Leasehold Mortgagee an agreement, prepared at the sole cost and expense of YIDA and the Company and in form reasonably satisfactory to such Leasehold Mortgagee and to CDA, among CDA, YIDA and Leasehold Mortgagee, confirming and agreeing to all of the provisions of this Article VII; provided, however, that by entering into such agreement, CDA shall not be deemed to have waived any of its rights under this Lease, including any of its rights under this Article VII.

Section 7.16 Legal Proceedings between CDA and YIDA or the Company. CDA shall give each Leasehold Mortgagee prompt notice of any legal proceedings between CDA and YIDA or the Company involving obligations under this Lease. The Leasehold Mortgagee shall have the right to intervene in any such proceedings and to be made a party to such proceedings; and CDA and YIDA and the Company do hereby consent to such intervention. In the event that the Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, YIDA or the Company shall give the Leasehold Mortgagee and every other Leasehold Mortgagee notice of, and a copy of any award or decision made in any such proceedings, which shall be binding upon all Leasehold Mortgagees.

Section 7.17 Notices. All notices shall be given in the manner described in Section 22.3 and shall in all respects be governed by the provisions of that Section.

Section 7.18 Mortgagee Deemed to Have Agreed.

Under the provisions of this Article VII, certain rights created hereunder are exercisable only by the Leasehold Mortgagee. By accepting a Leasehold Mortgage, each Leasehold Mortgagee shall be deemed to have consented and agreed to the provisions set forth in this Article VII.

Section 7.19 Parties Not Third Party Beneficiaries.

Neither the YIDA, the Company nor CDA shall be deemed to be a third party beneficiary of the rights granted hereunder to Leasehold Mortgagees and no Leasehold Mortgagee shall have any obligation to either YIDA, the Company or CDA to account for any decision it may make as to whether or not it elects to exercise its rights hereunder or any duty to either YIDA, the Company or CDA to exercise its right hereunder in any particular manner or order, other than that which the Leasehold Mortgagee, in its sole discretion but in any event subject to the terms of this Lease, shall deem appropriate and its own best interests.

Section 7.20 No Changes in Use or Improvements.

Without limitation of any other provision of this Article VII, it is agreed that nothing contained in this Article VII or in any other provision of this Lease shall be deemed or construed to permit or authorize any Leasehold Mortgagee or any successor thereto or any successor to YIDA or the Company to devote the Premises or any part thereof to any uses, or to construct any improvements or facilities thereon, other than those uses, or improvements or facilities, permitted in this Lease.

Section 7.21 No Subordination.

CDA's interest in this Lease, as the same may be modified, amended or renewed, and CDA's interest in the Premises shall not, under any circumstance, be or become subject or subordinate to any Leasehold Mortgage now or hereafter placed upon, or any other liens or encumbrances hereafter affecting this Lease, YIDA's interest in this Lease, or YIDA's Leasehold Estate in the Premises pursuant hereto. CDA agrees to execute and deliver a non-disturbance agreement in favor of Leasehold Mortgagees in form and substance satisfactory to CDA and Leasehold Mortgagees pursuant to which CDA agrees that so long as no Event of Default exists under this Lease, the rights of Leasehold Mortgagees shall not be disturbed.

ARTICLE VIII

INSURANCE

Section 8.1 Coverage.

YIDA shall cause the Company to obtain and maintain in effect the following types of insurance coverage at no cost or expense to CDA:

(a) Insurance on the Premises against loss or damage by fire and lightning, and all of the hazards included in the extended coverage endorsement, including, without limitation, lightning, vandalism, malicious mischief, sprinkler leakage and difference in conditions (including the perils of flood, earthquake, collapse and water damage and all other perils as defined in the current standard "all-risk" form), such insurance to be in an amount equal to not less than 90% of the actual replacement cost of the Improvements (exclusive of the cost of replacing excavation,

foundation and footings). The foregoing fire and extended coverage and insurance shall include "all risk" insurance for physical loss or damage. During the construction of the Premises, the Builder's Risk form of fire and extended coverage insurance (which shall include "all risk" insurance for physical loss or damage as aforesaid) shall be used;

(b) Comprehensive general liability and property damage insurance against claims for personal injury or death, or property damage suffered by others occurring on or about the Premises or any improvement or equipment located thereon, such public liability insurance to afford, with respect to any accident or occurrence, protection to the limits of not less than Ten Million Dollars (\$10,000,000) combined single limit for bodily injury and death and for property damage, together with contractual coverage (including but not limited to broad form contractual liability for the purposes of covering the indemnification provisions set forth in Article XX hereof) and completed operations, and owner's and contractor's protective liability on the operations of all contractors and subcontractors, respectively; all of such insurance shall, by its terms, be primary and noncontributory with respect to any other insurance carried by CDA;

(c) Automobile liability and property damage insurance for all owned, non-owned and hired vehicles insuring against liability for bodily injury and death and for property damage to afford protection to the limits of Five Million Dollars (\$5,000,000) combined single limit; such insurance shall, by its terms, be primary and noncontributory with respect to any other insurance carried by CDA; and

(d) Worker's compensation insurance (including \$500,000 employer's liability insurance) providing the statutory benefits required under applicable law.

Section 8.2 Policies. The policies of insurance shall comply with the following requirements.

Subsection 8.2.1. General Requirements. All of the policies of insurance provided for in this Lease shall be with reputable companies licensed and authorized to issue such policies in such amounts in the State of New York. Such insurance may be carried under blanket policies that include other properties and provide separate coverage for the Premises and the Improvements. Upon request, the Company shall deliver to CDA certificates showing such insurance to be in full force and effect. Such certificates shall be endorsed to show the receipt by the issuer of the premiums therefor or shall be accompanied by other evidence satisfactory to CDA of payment of such premiums. If the premium covers more than one (1) year and may be paid in installments, then only an annual installment must be paid in advance. Such policies shall contain express waivers by the insurer of any rights of subrogation against CDA. Any required insurance coverage shall be subject to deductible amounts reasonably satisfactory to CDA.

Subsection 8.2.2. Insureds. All insurance to be provided by the Company shall name the Company as insured and YIDA, CDA and the City of Yonkers as additional insureds and may, at the option of the Company, name any Leasehold Mortgagee or any other Persons, all as their respective interests may appear.

Subsection 8.2.3. Payment of Loss. All policies of insurance required to be maintained by the Company under this Lease, except for liability insurance, shall provide for payment of loss to the Company, and may be applied by the Company to such purposes as the Company deems appropriate, subject to any obligations of the Company with respect to application of insurance proceeds under this Lease, and subject to the requirements of any Leasehold Mortgage. All such policies of insurance shall provide for the adjustment of claims with the insurers under such policies by the Company.

Subsection 8.2.4. Renewal and Cancellation. Each policy of insurance required to be maintained by the Company under this Lease shall provide that it may not be canceled by the insurer for nonpayment of premiums or otherwise until at least ten (10) days after service of notice of the proposed cancellation upon CDA.

Subsection 8.2.5. Leasehold Mortgage Insurance Provisions. Notwithstanding any insurance requirements of any Leasehold Mortgagee, the insurance requirements under this Lease shall not be amended or reduced, and shall be in addition to any insurance requirements of any Leasehold Mortgagee. At the time of delivery of any casualty notice to the applicable insurer, YIDA shall require the Company to deliver copies of such notice to the Leasehold Mortgagee. The rights of YIDA, CDA and/or the City to any recovery under any policy of casualty insurance shall be subordinate to the rights of Leasehold Mortgagees.

ARTICLE IX

DAMAGE OR DESTRUCTION

Section 9.1 Repair or Restoration. If at any time during the Term, all or any part of the Premises shall be damaged or destroyed by fire or other casualty, then YIDA shall require the Company, at the Company's sole cost and expense, to commence and thereafter proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting the insurance loss, obtaining necessary financing and for Unavoidable Delays) to repair, restore, replace or rebuild the Improvements to substantially the same condition as existed immediately prior to the damage or destruction and substantially in accordance with the Construction Agreements originally approved by CDA, or such other construction agreements, as may be approved by CDA in accordance with the procedures set forth herein (the "Restoration Work").

Section 9.2 Insurance Proceeds: Deficits or Excess. The availability of insurance proceeds for Restoration Work is subject to the terms and conditions of Leasehold Mortgages. If the insurance proceeds received by the Company are insufficient to pay the entire cost of the Restoration Work, then the Company shall be responsible for the amount of any such deficiency. If the insurance proceeds received by and/or available to the Company shall exceed the entire cost of the Restoration Work, then such excess proceeds shall be the sole and absolute property of the Company, subject to the provisions of the Leasehold Mortgage.

Section 9.3 CDA Not Obligated; Mutual Release.

Under no circumstances shall CDA be obligated to make any payment, disbursement or contribution towards or on account of the cost of the Restoration Work. To the extent any insurance is not invalidated thereby, CDA and YIDA hereby releases and waives, and YIDA shall require the Company to release and waive, any claims such party may have against the other party from any liability for any loss or damage to any or all property located in the Premises or on the Premises, including any resulting loss of rents or profits of each, and of any occupant of the Improvements claiming its right of occupancy by or through such releasing and waiving party, which loss or damage is of the type covered by the insurance required to be maintained by it under Article VIII, regardless of any negligence on the part of the released party which may have contributed to or caused such loss or damage, and on behalf of such party's insurance carrier, waives any right of subrogation that may arise therefrom. If any party is by law, statute or governmental regulation or for any other reason (including insurance company requirements) unable to obtain or otherwise fails to obtain a waiver of the right of subrogation for the benefit of each other party then, during any period of time when such waiver is unobtainable, or has not been obtained for any reason, said party shall be deemed not to have waived any right of subrogation of its insurance carrier against the other party, and during the same period of time the other party shall be deemed not to have waived the right of subrogation of its insurance carrier against the party who has been unable, or failed for any reason, to obtain such waiver.

ARTICLE X

CONDEMNATION

Section 10.1 General. If a Taking occurs at any time during the Term but before fee title to the Premises is conveyed in accordance with Article XII of this Lease, then the provisions of this Article X shall apply to the condemnation proceedings and the distribution of any Condemnation Awards pertaining to such Taking.

Section 10.2 Improvements. The Condemnation Award attributable to the fee title estate for the Premises shall belong entirely to CDA. This provision shall govern whether or not separate awards are made to CDA, YIDA and the Company.

Section 10.3 Separate Awards by Court. The court in such condemnation proceedings shall, if not prohibited by law, be requested to make separate awards to CDA and the Company, and CDA and the Company shall request such action by such court. The provisions of Subsections 10.4.2 and 10.4.3 concerning termination of the Term and receipt and payment of the award shall also apply to circumstances governed by this Section 10.3 and shall be taken into account by the court in rendering separate awards.

Section 10.4 Single Award by Court.

Subsection 10.4.1. General. If the court in such condemnation proceedings is prohibited by law from making separate Condemnation Awards to CDA and the Company, or

declines to do so, then the provisions of Section 10.2 and this Section 10.4 shall apply to the distribution of the single Condemnation Award made by such court.

Subsection 10.4.2. Total Taking. If a Total Taking (other than a Temporary Taking) occurs, then the Rent shall be prorated between CDA and YIDA as of the Date of Taking, and this Lease shall be terminated as of the Date of Taking. The following provisions shall apply to the allocation of any Condemnation Award for such Total Taking:

(a) All sums, including damages and interest, constituting the Condemnation Award shall be deposited promptly with a mutually agreeable escrow agent, and shall be distributed pursuant to the terms of this Subsection 10.4.2; and

(b) The Condemnation Award shall be distributed and disbursed in the following amounts and in the following order of priority:

(1) To CDA, the greater of (i) the Purchase Price as adjusted under Article XII hereof, or (ii) a sum equal to the fair market value, as of the Date of Taking, of CDA's fee title interest to the Premises as encumbered by this Lease; and then

(2) Subject to the rights of Leasehold Mortgagees, to the Company the balance of the Condemnation Award.

Subsection 10.4.3. Partial Taking. If a Partial Taking occurs, then the Term shall not be reduced or affected in any way, this Lease shall remain in full force and effect for the portion of the Premises remaining after such Taking, and the portion of the Annual Rent payable under Section 3.1 of this Lease shall only be reduced if the Premises and the Improvements thereon are subject to the Taking, and if so taken, the reduction in Annual Rent shall be determined by appraisal based upon the same or similar method set forth in Article III hereof for determining an appraisal rent. Provided, however, if all of the Premises is taken, and CDA receives the condemnation award for the fee title interest of the Premises, then the Annual Rent shall be reduced to \$ -0 -. The following provisions shall apply to the allocation of any Condemnation Award for such Partial Taking:

(a) All sums, including damages and interest, constituting the Condemnation Award shall be deposited promptly with a mutually agreeable escrow agent, and shall be distributed and disbursed pursuant to the terms of this Subsection 10.4.3;

(b) The Company shall receive an amount sufficient to restore the Premises to an economically feasible state as close as is practicable to the condition set forth in the Construction Agreements originally approved by CDA and shall commence and thereafter proceed to repair, alter, raze or restore the remaining part of the Premises, or otherwise to secure the Premises and render the Premises safe. Notwithstanding anything to the contrary contained herein, if after partial taking, the Premises is not, in YIDA's or the Company's reasonable judgment, economically viable, YIDA can terminate this Lease.

(c) The remainder of the Condemnation Award shall be distributed and disbursed in the following amounts and in the following order of priority:

(1) To CDA a sum equal to the greater of (i) the Purchase Price as adjusted under Article XII hereof or (ii) the fair market value of CDA's fee title interest in the Premises as encumbered by this Lease which sum shall be further adjusted based upon the square footage of the Premises so taken; and then

(2) Subject to the rights of Leasehold Mortgagees, to the Company the balance of the Condemnation Award.

If the Condemnation Award received by the Company is insufficient to pay the entire cost of the Restoration Work, then YIDA shall cause the Company to pay the amount of any such deficiency. Under no circumstances shall CDA be obligated to make any payment, disbursement or contribution towards or on account of the cost of the Restoration Work.

Subsection 10.4.4. Temporary Taking. If a Temporary Taking occurs, then the Term shall not be reduced or affected in any way and YIDA shall continue to pay in full the Rent, without reduction or abatement, in the manner and at the times specified in this Lease. Except only to the extent that YIDA or the Company is prevented (either legally or as a practical matter) from so doing pursuant to the terms of the order of the condemning authority, YIDA or the Company shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such Taking had not occurred. Upon any such Temporary Taking, the Company shall be entitled to receive the entire amount of any Condemnation Award made for such Temporary Taking whether such award is paid by way of damages, rent or otherwise.

Section 10.5 Condemnation Proceedings. YIDA, the Company, CDA and any Leasehold Mortgagee shall each have the right, at its own expense, to appear in any condemnation proceeding and to participate in any and all negotiations, hearings, trials and appeals in such proceeding.

Section 10.6 Notice of Condemnation. If CDA, the Company or YIDA receives notification of any proposed or pending condemnation proceeding affecting the Premises, then the party receiving such notification shall promptly give notice to the other party, and to each Leasehold Mortgagee.

Section 10.7 Condemnation Settlement. CDA shall not settle or compromise any taking proceeding without the prior consent of the Company if the settlement or compromise adversely affects the Company's right to compensation hereunder.

ARTICLE XI

ASSIGNMENT AND SUBLETTING

Section 11.1 Representations as to Redevelopment. The YIDA represents agrees and the Company acknowledges that this Lease and the undertakings required pursuant to this Lease and the Sublease are for and shall be used for the purpose of urban renewal and redevelopment under Article 15 and not for speculation. YIDA agrees, and the Company further acknowledges that in view of:

(a) the importance of the redevelopment of the Premises as a whole to the general welfare of the City of Yonkers, and

(b) the substantial expenditures and other public commitments made and to be made by CDA and the City for the purpose of making such redevelopment possible, the qualifications and identity of the Company are of particular concern to the community, CDA and the City. The Company further recognizes that it is because of such qualifications and identity that CDA is entering into this Lease with YIDA and has approved the Sublease of the Premises to the Company, and in so doing, is further willing to accept and rely upon the obligations of the Company for the faithful performance of all undertakings and covenants by it to be performed hereunder and under the LDA.

Section 11.2 Sale, Transfer or Assignment of Lease.

Subsection 11.2.1. Prohibition. For the reasons set forth in Section 11.1, YIDA agrees for itself and for the Company that prior to Final Completion of the Project Improvements:

(a) The Company may, upon written notice to CDA, assign its interest in the Sublease and/or the Premises to an Affiliate without the written approval of CDA; upon written notice to CDA, but without the written consent of CDA, YIDA shall have the right at any time to assign this Lease and the Company to assign the Sublease and any and all subleases of the Premises and the Premises to any Leasehold Mortgagee as collateral security for the obligations of YIDA or the Company under a Leasehold Mortgage.

(b) Neither this Lease nor the Company's interest in the Sublease and the Premises, nor any part thereof, may be sold, transferred or assigned to anyone, including an Affiliate, if the consideration payable by the transferee or assignee or on its behalf shall exceed the aggregate amount of all expenditures actually made by the Company for or in connection with the Premises and Project Improvements prior to such transfer or assignment, it being the purpose and intention of this subsection 11.2.1 that the Company shall not make any profit through such sale, transfer or assignment prior to Final Completion of the Project Improvements, except as may be otherwise provided in subsection 11.2.2 hereof.

(c) YIDA and the Company will not make (and heretofore has not made) any total or partial assignment, pledge, encumbrance or other disposition or any trust or power, or transfer in any other mode or form of this Lease or the Sublease in its entirety, or rights therein, or any contract or agreement to do any of the same, except to an Affiliate of YIDA or the Company.

(d) The restrictions in this subsection 11.2.1 shall also apply to any sale, transfer, assignment, pledge, or other disposition or the making of any trust or power in a single transaction or in the aggregate, of

(i) more than fifty (50%) percent of the aggregate ownership or members' interest in the Company, or more than fifty (50%) percent of the capital stock of any successor to the Company (permitted or approved hereunder) that is a corporation, or more than a fifty (50%)

percent ownership interest in any successor to the Company (permitted or approved hereunder) that is a general partnership, or more than a fifty (50%) percent ownership interest in the general partner (or, considered in the aggregate, the general partners, if more than one) in any successor to the Company (permitted or approved hereunder) that is a limited partnership; or

(ii) more than fifty (50%) percent of the ownership or member's interest of either Louis R. Cappelli or Marc E. Berson in the Company, unless he remains as a Manager of the Company, provided, however, that the prohibition set forth above in this subparagraph (d) shall not apply to any sales, transfers, assignments, pledges or other dispositions (A) to or between the members of the Company, so long as the interest in the Company owned by Louis R. Cappelli or Marc E. Berson, is not reduced, in the aggregate, below fifty-one percent (51%); or (B) of the stock of any publicly held company or of any Financing Entity to the extent any such entity becomes, in compliance with the provisions of this Article XI, part of the Company; (C) to a Financing Entity provided, that the interest of the Financing Entity shall not exceed fifty (50%) percent of the aggregate ownership or members' interest in the Company, and provided, further, in the event of such a transfer to a Financing Entity, that Louis R. Cappelli or Marc E. Berson, shall continue to be the Manager(s) of the Company (or shall continue to be the managing general partner(s) of a permitted general partnership successor to the Company, or shall continue to be the only general partner(s) of a permitted limited partnership successor to the Company, or shall continue to be the owner(s), in the aggregate, of at least fifty-one (51%) of the voting shares of any permitted corporate successor to the Company), or (D) of any limited partner interests in any permitted limited partnership successor to the Company.

Subsection 11.2.2. Conditions of CDA's Approval. CDA shall be entitled to require, except as otherwise provide in this Lease, as conditions to any required approval by CDA pursuant to this Section 11.2 that:

(a) Any proposed assignee or transferee shall have the qualifications, experience and financial responsibility, as reasonably determined by CDA, necessary and adequate to fulfill the obligations undertaken in the Sublease by the Company with respect to this Lease, the LDA, and the construction, operation and marketing of the Premises.

(b) A duplicate original of the instrument of sale, transfer or assignment, duly executed and acknowledged by all parties to the transaction, and containing the assumption provisions required under Paragraph (c) below, shall have been submitted to CDA for review and approval promptly following the execution thereof, and in any event not less than fifteen (15) days prior to the date of the closing, and there shall have been submitted to CDA for review and approval, together with such instrument, (i) a statement containing information concerning the purchaser, transferee or assignee substantially equivalent to the information required by Redeveloper's Statement for Public Disclosure and Redeveloper's Statement of Qualifications and Financial Responsibility (form HUD-6004) and required attachments thereto, and (ii) evidence reasonably satisfactory to CDA of the power and authority of the purchaser, transferee or assignee to enter into such assignment and assumption agreement.

(c) Any proposed purchaser, transferee or assignee, by an agreement in writing satisfactory to CDA, shall for itself and its successors and assigns, and expressly for the benefit

of CDA, have expressly assumed all of the obligations of YIDA and the Company under this Lease and the Sublease and shall have agreed to be subject to all the conditions and restrictions to which YIDA and the Company are subject with respect to this Lease, the Sublease and the Premises, provided, that the fact that any assignee or transferee of, or any other successor in interest whatsoever to, this Lease shall, whatever the reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Lease or agreed to in writing by CDA) relieve or except such assignee, transferee or successor of or from such obligations, conditions, or restrictions, or deprive or limit CDA of or with respect to any rights or remedies or controls pertaining to this Lease or the Premises, as the case may be. It is the intent of this Subsection 11.2.2, together with other provisions of this Lease, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease) no assignment or transfer of, or change with respect to, this Lease or YIDA's Leasehold Estate or any rights under this Lease or rights pertaining to the Premises, or any interest in this Lease or in such Leasehold Estate or in the Premises or in the Improvements, or in the Company, however consummated or occurring, and whether voluntary or involuntary shall operate, legally or practically, to deprive or limit CDA of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to this Lease or the Premises or the construction of the Premises thereon, as the case may be, that CDA would have had, had there been no such transfer or change.

(d) Neither the Sublease nor the Company's interest in the Sublease or the Company's Leasehold Estate, nor any part thereof, nor any ownership or member's interest in the Company (or in any successor-in-interest to the Company), may be sold, transferred or assigned by the Company or by any such successor if the consideration payable by the transferee or assignee or on its behalf shall exceed the aggregate amount of all expenditures actually made by the Company for or in connection with the Project Improvements prior to such transfer or assignment, it being the purpose and intention of this Paragraph (d) that the Company (or any such successor) shall not make any profit through such sale, transfer or assignment prior to Final Completion of the Project Improvements. In the event any such sale, transfer or assignment is made (and is not canceled) CDA shall be entitled by notice to YIDA given within the time period set forth for approval of such transfer as provided in this Section 11.2.2, to increase the Annual Rent payable by YIDA (or any such successor) in the first year of the term of this Lease in which Annual Rent is payable by the amount that the consideration for the sale, transfer or assignment is, as reasonably determined by CDA, in excess of the amount that may be authorized pursuant to this Paragraph (d).

(e) In the absence of specific written agreement by CDA to the contrary, no such assignment or transfer, or approval thereof by CDA, shall be deemed to (i) relieve YIDA or the Company or any other person bound in any way by this Lease from any of its obligations under this Lease, or (ii) impair or reduce the effective, day-to-day control of Louis R. Cappelli or Marc E. Berson, over the development and construction activities for which the Company is responsible under this Lease.

(f) In connection with any assignment or this Lease or sale of the Premises permitted under this Article XI, YIDA or the Company shall, as a prior condition of the effectiveness of any such assignment or sale, deliver to CDA the agreements and documentation required under

Paragraph (b) and the provisions of the final sentence of said Paragraph (c) shall be applicable. In case of any such assignment or sale permitted under this Article XI, the assignor or seller shall not be liable for any default under this Lease occurring after the date of the assignment or sale or for any obligations or liabilities of YIDA or the Company accruing from and after the date of such assignment or sale, provided, that upon any assignment or sale, YIDA or the Company shall not be released from any pre-existing, continuing defaults hereunder, unless the assignee or purchaser shall execute an assumption agreement with respect thereto in form and substance reasonably satisfactory to CDA.

Subsection 11.2.3. Intentionally Omitted.

Subsection 11.2.4. Invalid Assignment. No assignment, transfer or sale (whether or not CDA's consent is required therefor) of this Lease or YIDA's interest in this Lease or the Company's interest in the Sublease or any part thereof or interest therein or in the Premises, nor any ownership or member's interest in the Company (or in any successor-in-interest to the Company) shall be valid unless and until the provisions, procedures and preconditions set forth in this Article XI applicable thereto have been satisfied, performed and fully complied with, as the case may be.

Section 11.3 Assignment by CDA. CDA shall have the right to assign its rights under this Lease freely, without any restriction or condition whatsoever, and without YIDA's consent, to any other Person, political subdivision, municipal corporation, public agency, public corporation, public benefit corporation or other governmental entity

Section 11.4 Subletting.

Subsection 11.4.1. Permitted Subletting. CDA hereby approves the Sublease and consents to the sublease transaction set forth therein. Except as provided in Subsection 11.4.2 below, any other sublease of the Premises or any part thereof by YIDA and any further sublease of the Premises or any part thereof by the Company shall be subject to the reasonable prior approval by CDA, the conditions for which are set forth above for transfers and assignments under Subsection 11.2.2; provided however, if there is a sublease for all, or substantially all, of the Premises for an annual rent in excess of the Annual Rent paid, or to be paid, by YIDA or the Company, the Annual Rent hereunder shall be redetermined (as if such date were the Rent Adjustment Date) by an appraisal rent as set forth in Article III hereof.

Subsection 11.4.2. Permitted Further Subletting. Notwithstanding Section 11.4.1, the Company shall have the right without approval of CDA to sublease any portion of the Premises in the ordinary course of its business and the use, occupancy and operation of the Project.

Subsection 11.4.3. Rights of Subtenants. All subleases (including the Sublease with the Company) covering any portion of the Premises shall be subject and subordinate to this Lease and the rights of CDA under this Lease, and the sublease instruments shall so provide. Notwithstanding the terms of any sublease, CDA may elect, upon written notice to any subtenant thereunder delivered within thirty (30) days after the termination of this Lease, to require any such subtenant to attorn to CDA such that, notwithstanding the termination

of this Lease, such sublease shall continue for the duration of its term and extensions of its term as a direct lease between CDA and such subtenant; provided, however, that:

(a) CDA shall not be responsible to the subtenant in question for any security deposits (unless the security deposits have been transferred to CDA) paid under its sublease nor for any rental that is paid more than thirty (30) days in advance of the due date under the terms of such sublease;

(b) CDA shall not be liable for any act or omission of YIDA or be subject to any offsets or defenses that such subtenant may have against YIDA.

(c) CDA shall provide to any subtenant requesting the same an attornment and non-disturbance agreement reasonably satisfactory to such subtenant. Such agreement shall contain (among other provisions) language to the effect that if for any reason this Lease is terminated by CDA in accordance with its terms, CDA will agree not to terminate the sublease (if subtenant is not in default thereunder) and such sublease shall continue with the same force and effect as if CDA had entered into such sublease with the subtenant.

Section 11.5 Continuing Requirement of Consent.

Any consent by CDA under any of the foregoing provisions of this Article XI shall apply only to the specific transaction thereby authorized and shall not relieve YIDA or the Company from the requirement of obtaining the prior written consent of CDA to any other transfer, assignment, sale or subletting.

ARTICLE XII

PURCHASE

Section 12.1 Grant of Fee Title. CDA, in consideration of this Lease, grants to the Company and any Leasehold Mortgagee succeeding to the rights of the Company under the Sublease, the right to purchase the fee title in and to the Premises from CDA at any time within ten (10) years after Substantial Completion of the first tower to be constructed at the Premises; provided, however, that if the Company decides to offer the residential units at the Premises for sale as condominiums, then subject to the approval of the CDA Board of Directors, which approval shall not be unreasonably withheld, conditioned or delayed, the Company may exercise the right to purchase earlier and before Substantial Completion of the first tower (an "Early Exercise"): (i) if required by an Institutional Lender as a condition of a construction or permanent loan for the Project Improvements; (ii) if required by the New York Attorney General in connection with the filing of a condominium plan for the Premises; and (iii) in conjunction with (and prior to) the filing of a condominium declaration for the Premises. Early Exercise by the Company shall not be permitted unless and until: (i) all Governmental Approvals are in place and building permits have been issued or are about to be issued for the construction of the Project Improvements; (ii) all contingencies for the initial draw under the construction loan(s) for the Project Improvements have been satisfied and such funds can be drawn by the Company; and (iii) the Company shall provide, and thereafter maintain in full force and effect until Substantial Completion of the Project Improvements, in favor of the

Institutional Lender(s) and, subject to the approval and the rights of the Institutional Lender(s), in favor of the appropriate City Entity, payment and performance bonds in an amount equal to the contracted hard costs of construction of the Project Improvements, including the Waterfront Public Improvements, a guaranty of completion of the Project Improvements from the Company, and a guaranteed maximum price contract for all aspects of the Waterfront Public Improvements, all in form and substance reasonably acceptable to the City Corporation Counsel. The Company shall give CDA written notice of its election to purchase fee title to the Premises ("Purchase Notice").

Section 12.2 Purchase Terms and Conditions. The Transfer Date shall take place on the applicable date at a location mutually agreed upon by the parties in writing or, if none is agreed, at the office of a lender providing loan financing to be used by the Company to pay the Purchase Price (defined below). If the conveyance of fee title to the Company occurs prior to Final Completion of the Project Improvements, then until Final Completion of the Project Improvements, the company's fee title shall be subject to the continuing conditions of this Lease and the Sublease, as the same may be amended.

Section 12.3. Purchase Price.

Subsection 12.3.1. Determination of Price. The purchase price of the Premises shall be \$2,850,000 (the "Purchase Price").

Subsection 12.3.2. No Exercise Right to Purchase Upon Default. YIDA and the Company shall have fulfilled all of their obligations under this Lease and the Sublease and must cure any existing Event of Default pursuant to the curative provisions of this Lease, prior to and as a condition to CDA conveying title to the Company.

Section 12.4 Deed; Costs. At the closing, CDA shall convey the Premises to the Company by bargain and sale deed without covenant, unless the Company accepts such lesser title that CDA may have by quitclaim deed without any reduction or abatement of the Purchase Price. The deed for the Premises shall be duly executed and acknowledged by CDA, in a manner proper for recordation, AS IS, without warranty as to the condition of the Premises. The Company shall bear the costs incurred in connection with the closing, including title insurance, the survey, the applicable real property taxes and other Impositions from the date of this Lease, the requisite state and local real property transfer taxes, and other transfer or similar taxes or transfer gain taxes which may then be in effect with respect to such conveyance and/or recording of the deed, and recording fees; provided, however, that the Company and CDA shall each bear the cost of their own attorney's fees. At closing, the CDA shall rebate to the Company the amount equal to the first two years of Annual Rent paid by the Company, provided that in no event shall the amount of the rebate exceed \$228,000; and provided further, such rebate shall not be applied to the Purchase Price if, at the time of closing, construction of the Guaranteed Phase 1 Development has not commenced in accordance with the LDA..

Section 12.5. Lease Remains in Effect Until Final Completion of Project Improvements. Upon the sale and purchase of the Premises and until, but only until, Final Completion of the Project Improvements, the terms and provisions of this Lease and the Sublease shall remain in full force and effect, the Company shall take title to the Premises

subject to this Lease and the Sublease, without merger of interests, and subject to all recorded covenants, easements and restrictions, and CDA's leasehold interest shall be separate and distinct from Company's fee title interest. The deed shall provide that prior to Final Completion of the Project Improvements, the right of CDA to remain as landlord under this Lease shall be a reserved right under this Lease, the Sublease and the deed, and that this Lease shall not be amended or terminated without the written consent of CDA and YIDA. The deed shall contain covenants running with the land requiring the Company to operate the Premises to further the purposes of Article 15 of the General Municipal Law of the State of New York in accordance with the Riverview Urban Renewal Plan, including the covenant of anti-speculation and the use and operation of the Premises contained in Article V of this Lease. The deed shall also contain the Company's indemnification of the City, CDA and YIDA. The form of deed is attached hereto as Exhibit _____. Notwithstanding the foregoing or anything to the contrary in this Lease, the Sublease or the LDA, neither the YIDA nor the Company shall be obligated to pay Annual Rent under this Lease after the Purchase Price has been paid in full and fee title conveyed to the Company.

Section 12.6. Failure by the Company to Close. If having given a Purchase Notice to CDA, the Company, without fault on the part of CDA, thereafter fails to pay the Purchase Price, execute and deliver all documents and take any other actions that may be necessary in order to consummate its purchase, then the Company shall reimburse CDA in an amount equal to one hundred (100%) of all reasonable costs and expenses incurred by CDA, including without limitation reasonable attorney's and appraisers' fees, in connection with the intended transfer.

Section 12.7. Continuing Covenants. Notwithstanding any conveyance of title to the Premises under this Article XII, the provisions of Article V of this Lease pertaining to use of the Premises, and the provisions of this Lease and of the LDA pertaining to nondiscrimination and equal employment opportunity in the use and occupancy of the Premises shall survive such conveyance and shall remain in full force and effect until the expiration and/or termination of the Riverview Urban Renewal Plan, unless such provisions are otherwise extended pursuant to law.

Section 12.10. Estoppel Certificates. At the closing of fee title from CDA to the Company, CDA and YIDA shall each prepare and deliver an estoppel certificate to the Leasehold Mortgagee in accordance with the provisions of Section 22.6 of this Lease.

ARTICLE XIII

DEFAULTS BY YIDA AND CDA'S REMEDIES

Section 13.1 Events of Default by YIDA. The occurrence and continuance of any of the following events, acts or circumstances shall be and constitute an "Event of Default" by YIDA or the Company:

(a) Failure by YIDA to pay, or cause to be paid, in full any Rent payable under this Lease when due, and the continuance of such failure for sixty (60) days after CDA gives notice of such failure to YIDA and the Company.

(b) Failure by YIDA to pay, or cause to be paid, any Additional Rent, including any Impositions, when required to be paid hereunder, and the continuance of such failure for sixty (60) days after CDA gives notice of such failure to YIDA and the Company.

(c) Failure by the YIDA to obtain, or cause to be obtained, and maintained in full force and effect any policies of insurance required to be maintained hereunder, and the continuance of such failure for sixty (60) days after CDA gives notice of such failure to YIDA and the Company.

(d) Failure by YIDA and/or the Company to observe, perform or comply with any of the terms, covenants, agreements or conditions contained in this Lease (other than as specified in Section 13.1(a), (b) and (c)), or if the representations and warranties set forth in Section 16.1 of this Lease shall be inaccurate in any material respect, and the continuance of such failure, inaccuracy or incompleteness for sixty (60) days after CDA gives notice of such failure or inaccuracy to YIDA and the Company, or, when the cure reasonably requires more than sixty (60) days, the failure of YIDA or the Company to (i) commence to cure such failure, inaccuracy or incompleteness within such period of sixty (60) days, and (ii) thereafter to diligently and continuously prosecute such cure to completion;

(e) Failure by the YIDA and/or the Company to commence or complete construction of the ProjectImprovements in accordance with the terms of this Lease, including the Affordable Housing Commitment;

(f) The admission in writing by the Company of its inability to pay its debts generally as they become due, or the making by the Company of a general assignment for the benefit of creditors, or the commencement by the Company or any such member of any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of the Company, or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for the Company, for the Premises or the Premises and/or any substantial parts thereof, or for all or any substantial part of its property or assets;

(g) The commencement of any case, proceeding or other action against YIDA or the Company, seeking to have an order for relief entered against the Company as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of YIDA or the Company or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for YIDA, the Company, for the Premises, and/or any parts thereof, or for all or any substantial part of its property or assets, and such case, proceeding or other action (i) results in the entry of an order for relief against YIDA or the Company (or in the appointment of a receiver, trustee, custodian or official for the Premises or the Premises which is not stayed within sixty (60) business days after entry thereof, or (ii) is not dismissed (or otherwise not vacated) for a period of ninety (90) days;

(h) The levying or filing against the Premises or the Improvements or any part thereof, of any execution, warrant, attachment, garnishment or other similar process, and such processes shall not be stayed, vacated, secured or discharged within ninety (90) days after the same shall have been levied or filed or such longer period as may be reasonably required provided a surety company bond has been posted;

(i) The vacating or abandonment by YIDA and the Company of the Premises, the Improvements or any parts thereof for a period of time (in excess of sixty (60) days which is inconsistent with the continued diligent performance and observance by YIDA of its covenants and agreements to be observed and performed hereunder, unless such vacating or abandonment was caused by a permitted cause hereunder, i.e., Unavoidable Delay or extensions of time for the benefit of the Leasehold Mortgagee under Article VII hereof), and such event shall continue uncured for a period of ninety (90) days after notice thereof is given by YIDA to the Company;

(j) The assignment or transfer by the Company of this Lease or the estate of YIDA hereunder without CDA's approval (where required hereunder, or without compliance with the provisions of this Lease applicable thereto);

(k) The failure by the Company to maintain its legal existence in good standing or fail to pay any franchise tax when and as the same shall become due and payable, and any such failure shall continue uncured for ninety (90) days after notice thereof is given by CDA to YIDA and the Company, or if such failure is capable of being cured but is not curable within such ninety (90) day period, for such larger period of time, up to a maximum of one (1) year, as may be necessary to cure such failure using due diligence, provided that the Company promptly commences and diligently pursues efforts to effect such cure; or

(l) The occurrence of a default or an Event of Default by the Company under the Sublease beyond any applicable grace and notice periods thereunder.

Section 13.2 Remedies of CDA. Whenever any Event of Default by YIDA or the Company shall exist, CDA may take any one or more of the following remedial steps (subject to the provisions of Article VII):

(a) CDA may sublease the Premises in their entirety or in parts for the account of YIDA or operate the Premises, and collect rents from the Company's subtenants (reserving, however, within CDA's reasonable judgment, the right to determine the method of collection and the extent to which enforcement of collection of delinquent rents shall be prosecuted, and CDA shall not be accountable for money other than money actually received by CDA from the Premises), and in this connection YIDA and the Company authorize CDA upon such entry to take over and assume the management, operation and maintenance of the Premises and in general to perform all actions necessary in connection with such management, operation and maintenance in the same manner and to the same extent as YIDA might so act, using CDA's reasonable, good faith efforts to operate the Premises and/or the Premises for the account of YIDA.

(b) CDA may terminate this Lease upon at least 30 days written notice to YIDA (the "Termination Notice") and the Company, take possession of the Premises and (by summary proceedings or otherwise) exclude YIDA and the Company from possession thereof (using such

force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor) and/or dispossess YIDA and the Company, and hold YIDA and the Company liable for damages. Upon any such termination, YIDA and the Company shall continue to be liable for its obligations to pay Rent and other amounts due hereunder, but no further rights, obligations or duties shall continue to exist between the parties by virtue of this Lease.

(c) CDA may take any and all actions at law or in equity to collect the Rent then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of YIDA or the Company under this Lease, and in connection with either, to recover any or all costs, including reasonable attorneys' fees, to CDA for YIDA's violation or breach of this Lease.

(d) If CDA shall terminate the Lease as herein-above provided, CDA may (i) complete construction of all Improvements required to be constructed by the Company hereunder and may repair and alter the Premises and the Improvements in such manner as CDA may deem necessary or advisable, and/or (ii) let or relet the Premises and/or the Improvements, or any parts thereof, for the whole or any part of the remainder of the Term or for a longer period, in CDA's name or as agent of YIDA and the Company, and/or (iii) sell or transfer the same, as a whole or in parts or as individual residential units, to any Person or Persons for additional development, individual occupancy or otherwise, and/or (iv) possess, operate and manage the Premises and collect rent from the Company's former subtenants, reserving, however, within CDA's reasonable judgment, the right to determine the method of collection and the extent to which enforcement of collection of delinquent rents shall be prosecuted, without, in the event of CDA taking any action described in (i) and/or (ii) and/or (iii) and/or (iv) above, relieving the Company of any liability under this Lease or otherwise affecting any such liability; and out of any rent and other sums collected or received as a result of such reletting or sale CDA shall: (i) first, pay to itself the cost and expense of terminating this Lease; re-entering, retaking, repossessing, completing construction of the Premises and repairing or altering the Premises and/or the Premises, or any parts thereof, and the cost and expense of removing all Persons and property therefrom, including in such costs brokerage commissions, legal expenses and attorney's fees and disbursements, (ii) second, pay to itself the cost and expense sustained in securing any tenant(s) and other occupants and/or purchasers, including in such costs brokerage commissions, legal expenses and reasonable attorney's fees and disbursements and other expenses of preparing the Premises and/or the Premises for reletting or sale, as the case may be, and, if CDA shall construct, repair, maintain and/or operate the Premises and/or the Premises, or any parts thereof, the cost and expense of constructing, repairing, operating and/or maintaining the same, and (iii) third, pay to itself any balance remaining on account of the liability of YIDA or the Company to CDA. Thereafter CDA shall pay the balance, if any, to the Leasehold Mortgagee to the extent of the outstanding balance of such Mortgage, and the remainder to YIDA. CDA in no way shall be responsible or liable for any good faith failure to relet or resell the Premises and/or the Premises, or any parts thereof, or for any good faith failure to collect any rent due on any such reletting or sale, and no such good faith failure to relet or sell or to collect rent shall operate to relieve YIDA or the Company of any liability under this Lease or to otherwise affect any such liability.

(e) CDA may pursue any combination of such remedies and/or any other remedies available at law or in equity.

Section 13.3 Rights of Leasehold Mortgagees.

Notwithstanding the provisions of Section 13.2 above, CDA's right to terminate this Lease or utilize other remedies by reason of an Event of Default on the part of YIDA or the Company shall be subject to the rights of the Leasehold Mortgagee to receive, prior to any exercise of such right of termination, CDA's written Notice of Default and to the rights of such Leasehold Mortgagees set forth in Article VII hereof and the written consent thereof by the Leasehold Mortgagee.

Section 13.4 No Remedy Exclusive.

No remedy conferred upon or reserved to CDA in this Lease is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute.

Subsection 13.4.1. Termination for Cause.

Upon termination of this Lease by CDA as a result of an Event of Default, title to the Premises and all of the Project Improvements shall vest in CDA. The Company's remedy for a refund, if any, of the credit upon termination shall be limited to funds available to CDA from the Premises and the rights of the Leasehold Mortgagee; provided however, the Company shall not have a lien upon the Premises for the amount of said credit.

Section 13.5 Agreement to Pay Attorneys Fees and

Expenses.

If an Event of Default by YIDA occurs under this Lease, or if YIDA holds over or continues possession after the termination or expiration of the Term, and CDA employs attorneys or incurs other expenses in connection with such Event of Default, or holding over or continuation of possession, then YIDA shall pay, or cause the Company to pay, the reasonable fees of such attorneys actually incurred by CDA and such other reasonable expenses as are actually incurred by CDA, to CDA on demand.

Section 13.6 Holding Over.

YIDA and the Company shall surrender possession of the Premises to CDA upon the termination or expiration of the Term. CDA may thereupon enter upon, reenter, possess and repossess the Premises, dispossess and remove YIDA and the Company, and have, hold and enjoy the Premises and the right to receive all rental and other income from the Premises, free of any right, title, estate, interest or claim of YIDA or the Company. If YIDA or the Company refuses to surrender possession and instead holds over, then YIDA or the Company shall be only a tenant at sufferance and not a tenant at will, upon all of the terms and conditions of this Lease, except that YIDA shall pay, or cause the Company to pay, Annual Rent in an amount equal to 150% of the Annual Rent for the immediately preceding Lease Year. There shall be no renewal or extension of this Lease by operation of law.

Section 13.7 CDA's Performance of YIDA's

Obligations.

If YIDA or the Company has failed to perform an obligation under this Lease and if an Event of Default has resulted from such failure to perform, then in addition to the other rights of CDA under this Lease, CDA shall, upon reasonable prior notice to YIDA, the Company and the Leasehold Mortgagee, have the right, but not the obligation, to perform such obligation. Upon receipt of notice demanding same, YIDA shall

cause the Company to reimburse CDA for the reasonable cost, documented to the Company's reasonable satisfaction, of any such performance by CDA plus interest thereon at the Default Rate from the date of such notice until the date of repayment by the Company. The amount of such reimbursement shall be deemed Rent.

Section 13.8 Waiver. To the extent not prohibited by law, YIDA and the Company hereby waive and release all rights now or hereafter conferred by law or otherwise which would have the effect of limiting or modifying any of the provisions of this Section 13. YIDA and the Company shall execute, acknowledge and deliver any instruments which CDA may request, whether before or after the occurrence of an Event of Default, evidencing such waiver or release.

Section 13.9 Suits by CDA. Any suit or suits for the recovery of damages or for a sum equal to any installment or installments of Annual Rent, Additional Rent, or any other sums or charges payable hereunder, or other sums payable by YIDA or the Company to CDA pursuant to this Section 13 may be brought by CDA from time to time at CDA's election to the extent that such amounts are then due, and nothing herein contained shall be deemed to require CDA to await the date whereon this Lease or the Term would have expired or any payment hereunder would have been due had there been no Event of Default by YIDA and termination.

Section 13.10 No Waiver by CDA. Unless otherwise agreed to by CDA and except as otherwise provided by law, no receipt of monies by CDA from YIDA or the Company after the termination of this Lease, or after the giving of any notice of the termination of this Lease shall reinstate, continue or extend the Term or affect any notice theretofore given to YIDA, or operate as a waiver of the right of CDA to enforce the payment of Annual Rent, Additional Rent, any other sums or charges, and/or damages payable by YIDA or the Company hereunder or thereafter falling due, or operate as a waiver of the right of CDA to recover possession of the Premises by proper remedy, except as herein otherwise expressly provided, it being agreed that after the service of notice to terminate this Lease or the commencement of any suit or summary proceedings, or after a final order of judgment for the possession of the Premises, CDA may demand, receive and collect any monies due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such monies collected being deemed payments on account of the use and occupation of the Premises, or, at the election of CDA, on account of YIDA's or the Company's liability hereunder.

Section 13.11 Waivers by YIDA. Except as otherwise expressly provided herein or as prohibited by applicable law, YIDA hereby expressly waives the service of any notice of intention to re-enter provided for in any law, or of the institution of legal proceedings to that end, and YIDA, for an on behalf of itself and all Persons claiming through or under YIDA, also waives any and all right of redemption provided by any Law, or any and all right or to restore the operation of this Lease in case YIDA shall be dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by CDA or in case of any expiration or termination of this Lease. YIDA reserves its rights to request trial by jury in any action, proceeding or counterclaim brought by CDA against YIDA on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of CDA and YIDA,

YIDA's use or occupancy of the Premises, or any claim of injury or damage. In a summary proceeding to dispossess YIDA, YIDA shall not interpose any counterclaim of any kind in any action or proceeding commenced by CDA to recover possession of the Premises and/or the Improvements. The terms "enter", "re-enter", "entry" or "Re-entry", as used in this Lease are not restricted to their technical legal meaning.

ARTICLE XIV

DEFAULT BY CDA

Section 14.1 Events of Default by CDA. The occurrence of any of the following events, acts or circumstances shall be and constitute an "Event of Default" by CDA:

(a) Failure by CDA to pay in full any amount payable to YIDA and or the Company under this Lease when due, and the continuance of such failure for sixty (60) days after YIDA or the Company gives notice to CDA of such failure; or

(b) Failure by CDA to observe, perform or comply with any of the other terms, covenants, agreements or conditions contained in this Lease, and the continuance of such failure for sixty (60) days after notice to CDA of such failure, or, when the cure reasonably requires more than sixty (60) days, the failure of CDA to commence to cure such failure within such 60-day period and thereafter to diligently and continuously prosecute such cure to completion; or

(c) Any representation made in this Lease by CDA shall fail in any material way to be accurate and complete and such failure shall continue and not be cured for a period of thirty (30) days after written notice to CDA, or, when the cure reasonably requires more than sixty (60) days, the failure of CDA to commence to cure such failure within such 60-day period and thereafter to diligently and continuously prosecute such cure to completion.

Section 14.2 Remedies. Whenever any Event of Default by CDA shall exist and until it is cured, YIDA or the Company may, to the extent not prohibited by law, take any and all actions at law or in equity to collect the amount then due or to enforce performance and observance of any obligation, agreement or covenant of CDA under this Lease and the LDA, and in connection with either, to recover any or all damages to YIDA or the Company for CDA's violation or breach of this Lease.

Section 14.3 No Remedy Exclusive. No remedy conferred upon or reserved to YIDA or the Company in this Lease or the LDA is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute.

Section 14.4 YIDA's Performance of CDA's Obligations. If CDA has failed to perform an obligation under this

Lease and if an Event of Default by CDA has resulted from such failure to perform, then in addition to the other rights of YIDA and the Company under this Lease, YIDA or the Company shall have the right, but not the obligation, to perform such obligation. Upon receipt of notice demanding same, CDA shall reimburse YIDA or the Company for the reasonable cost, documented to CDA's reasonable satisfaction, of any such performance by YIDA or the Company plus interest thereon at the Default Rate from the date of such notice until the date of repayment by CDA.

ARTICLE XV

PRIORITY OF LEASEHOLD

CDA shall not subject its fee ownership of the Premises to any mortgage, lien or encumbrance, without prior written notice to YIDA and the Leasehold Mortgagee and the written consent of the Leasehold Mortgagee. Nothing set forth in this Lease or in the LDA shall be deemed to require the subordination of CDA's fee ownership of the Premises to the lien of any Leasehold Mortgage.

ARTICLE XVI

REPRESENTATIONS

Section 16.1 Representations of YIDA and the Company. In order to induce CDA to enter into this Lease, YIDA hereby represents and warrants, with full knowledge that CDA shall rely on such representations and warranties, that YIDA is a public benefit corporation duly formed and validly existing under the laws of the State of New York, and has full power and authority to consummate the transactions to which it is a party as contemplated herein, including without limitation, the Sublease, and all action for which it is responsible under this Lease and under the Sublease; that YIDA is not a party to any agreement, not heretofore disclosed to and approved by CDA, containing terms or conditions in any way restricting or subjecting to conditions subsequent or precedent, or subjecting to approval, consent or control by any person who or which is not a member or officer of YIDA, limiting directly or indirectly the ability of YIDA to exercise management discretion and control over the affairs and business of YIDA in connection with this Lease or the Sublease, or any matter or transaction related to any of the Lease or Sublease or the Premises or the redevelopment thereof; and that YIDA hereby represents and warrants for itself, and where applicable, the Company hereby warrants and represents only for an with respect to itself (a) the Company is a duly formed and validly existing, duly qualified to do business in the State of New York and has full authority to consummate the transactions contemplated hereby; (b) Louis R. Cappelli and Marc E. Berson are the only Managers of the Company, and they, or either of them, exercise(s) effective, day-to-day control and management over the Company and over all activities for which the Company is responsible under this Lease and under this Lease; (c) neither the Company, nor any person or entity having an ownership interest in the Company, nor any Manager of the Company, is a party to any agreement (including without limitation any Operating Agreement of the Company), not heretofore disclosed to and approved by CDA,

containing terms or conditions in any way restricting or subjecting to conditions subsequent or precedent, or subjecting to approval, consent or control by any person who or which is not a Manager (including without limitation any creditor of or investor in the Company or any of its Managers), limiting directly or indirectly the ability of the above-named Managers of the Company to exercise management discretion and control over the affairs and business of the Company in connection with this Lease, the Financing Documents, the Construction Agreements, or any matter or transaction related to any of the foregoing or agreements or documents or to the performance or implementation thereof; (d) this Lease and the Sublease has been duly authorized by all necessary action on the part of YIDA and the Company and have been duly exercised and delivered by YIDA and the Company; (e) neither the execution and delivery hereof, nor compliance with the terms and provisions hereof (1) requires the approval and consent of any Governmental Agency or any other entity or person, except such as have been duly obtained and the Governmental Approvals; (2) contravenes any existing law, judgment, governmental rule, regulation or other applicable to or binding on YIDA or the Company (except, and to the extent, that any of the same are to be modified through Governmental Approvals as herein contemplated), or (3) contravenes or results in any breach of or, except as contemplated by this Lease or the Sublease, results in the creation of any lien or encumbrance upon any property of YIDA or the Company under any indenture, mortgage, deed of trust, bank loan or credit agreement, applicable ordinances, resolutions or any other agreement or instrument to which YIDA or the Company is a party, specifically including any covenants of any bonds, notes, or other forms of indebtedness of the Company outstanding on the date hereof; and (f) this Lease and the Sublease constitute a legal, valid and binding obligation of YIDA and the Company enforceable against YIDA and the Company in accordance with the terms thereof.

Section 16.2 Representations of CDA. In order to induce YIDA to enter into this Lease, CDA hereby represents and warrants, with full knowledge that YIDA and the Company shall rely on such representations and warranties, that (a) CDA has full power and authority to consummate the transactions contemplated hereby; (b) this Lease has been duly authorized by all necessary action on the part of CDA and has been duly executed and delivered by CDA, neither the execution and deliver thereof, nor compliance with the terms and provisions thereof (1) requires the approval and consent of any Governmental Agency or any other entity or person, except such as have been duly obtained or such as are Governmental Approvals to be obtained; (2) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on CDA (except, and to the extent, that any of the same are to be modified through Governmental Approvals as contemplated herein), or (3) contravenes or results in any breach of or, except as contemplated by this Lease, results in the creation of any lien or encumbrance upon any property of CDA under any indenture, mortgage, deed of trust, bank loan or credit agreement, applicable ordinances, resolutions or, on the date of this Lease, any other Lease or instrument to which CDA is a party, specifically including any covenants of any bonds, notes or other forms of indebtedness of CDA outstanding on the date hereof; and (c) this Lease constitutes a legal, valid and binding obligation of CDA, enforceable against CDA in accordance with the terms thereof.

Section 16.3 Opinions of Counsel. Concurrently with the execution of this Lease, YIDA, the Company and CDA shall each deliver an opinion of counsel to the other in form reasonably satisfactory to such party with respect to such party's representations set forth above.

Section 16.4 No Other Representations. Each of the parties to this Lease acknowledges to the other that, except as otherwise specifically provided herein, (a) no representations, statement or warranties, express or implied, have been made by, or on behalf of, any such party with respect to such party or with respect to the Premises, or with respect to the transactions contemplated by this Lease, and (b) it has not relied on such representations, statements or warranties.

ARTICLE XVII

ARBITRATION

Section 17.1 Settlement by Arbitration. If any dispute shall arise under any provision of this Lease, and such dispute shall not be resolved by the parties within thirty (30) days following the delivery by any party of a notice of intention to invoke the provisions of this Section 17.1, any party to this Agreement may initiate arbitration proceedings under this Section 17.1, which shall be conducted in accordance with the following provisions:

(a) **Initiation.** If any party elects to initiate arbitration proceedings hereunder, it shall do so by giving written notice to that effect to the other parties. Within seven (7) days after the service of such notice, each party shall appoint an arbitrator and notify the other parties thereof, specifying the name and address of the person designated to act as an arbitrator on its behalf. Each arbitrator chosen or appointed pursuant to this Article 17 shall be a disinterested person who shall not be an employee of, consultant to, or otherwise associated with the appointing party and each arbitrator chosen or appointed shall have at least ten (10) years experience in the State of New York in the particular issues involved in a calling connected with the dispute. If any party fails to appoint an arbitrator within the time above specified, then the President or any other executive of the American Arbitration Association shall, on written application of a party not in default with respect to such appointment, appoint an arbitrator for and on behalf of the party which failed to make such appointment.

(b) **Selection of Arbitrator.** The three (3) arbitrators chosen shall meet within seven (7) days after the notification for the appointment of the last appointed arbitrator and commence such hearings and investigations as they deem appropriate to resolve the dispute. If any person appointed as arbitrator by or on behalf of any party shall die, fail to act, resign or become disqualified, the party by or on behalf of whom such appointment was made shall, within five (5) days after notice of such death, failure to act, resignation or disqualification, appoint some other person as a substitute arbitrator (which substitute arbitrator may not be an employee of, consultant for, or otherwise associated with the appointing party), and, if appointment is not made within such five (5) day period, then the President or any executive officer of the American Arbitration Association shall, upon application of the party not in default, appoint a substitute arbitrator. In the event that, for any reason whatsoever, an arbitrator or arbitrators shall not be appointed as provided herein, such arbitrator or arbitrators shall be named or appointed in accordance with the then-prevailing provisions of the laws of the State of New York relating to arbitration. Any arbitrator (or substitute therefore) appointed pursuant to this subsection shall be a competent and impartial person having the qualifications set forth in the provision of this

Agreement applicable to the dispute which is the subject matter of the arbitration.

(c) Location of Meetings. All meetings of arbitrators and other arbitration proceedings under this Article 17 shall be held or conducted in Westchester County.

(d) Limited Issues. The arbitration shall be limited to the question(s) at issue. The arbitrators shall render their decision, upon the concurrence of two (2) of their number, within ten (10) days after the appointment of the last appointed arbitrator or substitute arbitrator. The arbitrators shall meet on all business days until they reach a decision. Such decision shall be in writing and counterpart copies thereof shall be delivered to each of the parties, who agree to abide thereby and any judgment may be entered thereon in any court of competent jurisdiction and may be enforced in accordance with the laws of the State of New York. In rendering such decision, the arbitrators shall not add to, subtract from or otherwise modify the provisions of this Agreement. The foregoing, however, shall not prevent the arbitrators from determining the applicable provisions of this Agreement, the Development Leases or the Financing Leases and interpreting and construing such provisions. The arbitration conducted pursuant to this Article 17 shall be deemed binding arbitration under the laws of the State of New York.

(e) Fees. The parties shall share equally in the fees and expenses of the arbitrators appointed in accordance with this Lease. The party substantially prevailing in the arbitration shall, at the discretion of the arbitrators, be entitled to recoup all costs of the arbitrators, together with all legal and other costs and expenses incurred by such prevailing party in connection with the arbitration.

ARTICLE XVIII TITLE TO IMPROVEMENTS; SURRENDER

Section 18.1 Title to Improvements. Title to the Improvements and any alteration, changes or additions thereto, shall be and remain in YIDA or the Company during the Term of this Lease pursuant to the terms of the Sublease. During the Term of this Lease, the Company shall be entitled, for all taxation purposes, to claim depreciation and tax credits and deductions on the Improvements included in this Leasehold Estate hereunder pursuant to the terms of the Sublease.

Section 18.2 Upon Purchase. If the Company purchases the Premises, then title to the Premises shall be in the name of the Company after the purchase, and the deed shall contain the covenants and restrictions set forth in Section 12.6 of this Lease. The form of deed is attached hereto as Exhibit ____.

Subsection 18.2.1. Surrender at End of Term. On the last day of the Term or upon any earlier termination of this Lease for any reason (other than the purchase by the Company of the Premises), or upon re-entry by CDA pursuant to the provisions of this Lease, YIDA and the Company shall well and truly surrender and deliver up to CDA (a) the Premises, without any payment or allowance whatever by CDA, in good order, condition and repair, reasonable wear and tear excepted, free and clear of the Leasehold Mortgage and all lettings, occupancies, liens and encumbrances other than the Permitted Title Exceptions and such other

liens and encumbrances as shall have been created by CDA or to which CDA shall have expressly consented in writing, and (b) the balance of any Subtenant deposits. YIDA hereby waives any notice now or hereafter required by law with respect to vacating the Premises and/or any parts thereof on any such termination date.

Subsection 18.2.2. Assignments to CDA. On the last day of the Term or upon any earlier termination of this Lease (other than the purchase of the Premises by the Company) or upon re-entry by CDA pursuant to the provisions of this Lease, YIDA shall cause the Company to assign to CDA, subject to the rights of Institutional Lenders and Leasehold Mortgagees, all of its right, title and interest in, and deliver to CDA, YIDA or the Company executed counterparts of all assignable Construction Agreements, any other assignable agreements with architects, managers and other professionals providing services in connection with the construction of the Premises, any assignable service and maintenance contracts then affecting the Premises, the Project Improvements and/or any parts thereof, true and complete maintenance records for the Premises, the Project Improvements, the Equipment and/or any parts thereof, all original permits then pertaining to the Premises and/or any parts thereof, including, without limitation, any permanent or temporary Certificates of Occupancy then in effect for the Project Improvements, payment and performance bonds, all warranties and guarantees then in effect which YIDA or the Company has received in connection with any work or services performed or building materials and Equipment purchased for and/or installed in the Premises, all financial reports, books and records which are reasonably requested by CDA, and any and all other documents of every kind and nature reasonably relating to the continued development or operation of the Premises.

Subsection 18.2.3. Written Confirmation. YIDA and the Company shall, upon demand, execute, acknowledge and deliver to CDA a written instrument in recordable form confirming the date of expiration or termination of this Lease, as well as any reasonable assurance of title to the Premises that CDA may request, together with instruments in recordable form evidencing the cancellation or expiration of any memorandum of this Lease and/or any other recorded documents executed by and between CDA and YIDA applicable hereto.

Subsection 18.2.4. Personal Property. Any personal property owned by YIDA or the Company which shall remain on the Premises shall, after termination of this Lease and the removal of YIDA and the Company from the Premises, become a part of the Improvements and be deemed to have been abandoned by YIDA and the Company, and may be retained by CDA as its property or be disposed of without accountability in any manner as CDA may see fit. CDA shall not be responsible for any loss or damage occurring to any such property.

Subsection 18.2.5. Survival. The provisions of this Article XVIII shall survive the expiration or earlier termination of this Lease.

ARTICLE XIX

LIMITATION OF LIABILITY

Section 19.1 Liability of CDA. Notwithstanding anything to the contrary set forth in this Lease, YIDA and the Company agree that the obligations of CDA under or with respect to any of the terms, covenants and conditions of this Lease and any agreement or instrument to be executed pursuant to this Lease shall not constitute personal obligations of CDA or the City, or their respective members, elected or appointed officials, officers, employees, agents or representatives or members of the City Council or of the members of any board, council, commission, office, agency or consultant of CDA or the City, and shall not create or involve any claim against, or personal liability on the part of, them or any of them, and YIDA and the Company and all persons claiming by or under YIDA and the Company will look solely to CDA's interest in the Premises for the enforcement of any remedy or the satisfaction of any obligation or liability of CDA and will not enforce any remedy or execute or collect any judgment out of or against any other assets or properties of CDA. For the purposes of this Section, the terms "CDA and/or the City" shall be deemed to include the _____ [insert agent for the City], herein defined as _____ [insert initials of agent].

Section 19.2 Liability of YIDA. YIDA has agreed to accept the leasehold interest in the Premises demised pursuant to this Lease solely for the purpose of preserving certain financial benefits to the Company as described in the LDA, and for no other purpose, and, accordingly, (i) all obligations of YIDA under this Lease shall be special obligations of YIDA payable solely out of any amounts to be paid and actions to be taken by the Company under the Sublease, and CDA shall have no other recourse whatsoever against YIDA with respect to such obligations, and (ii) all obligations undertaken by YIDA on behalf of the Company and warranties and representations made by YIDA specifically on behalf of the Company pursuant to this Lease shall be the obligations, warranties and representations of the Company only and not of YIDA.

Section 19.3 Survival. The provisions of this Article XIX shall survive the expiration or sooner termination of this Lease.

ARTICLE XX

INDEMNIFICATION

Section 20.1 Indemnification of CDA and Others. Neither YIDA nor the Company shall do or permit any act or thing to be done upon the Premises which may subject CDA to any liability or responsibility for injury, damage to persons or property, or to any liability by reason of any violation of law, and shall exercise such control over the Premises as may be necessary or advisable so as to fully protect CDA against any such liability. YIDA agrees, and the Company acknowledges, that the Company shall, to the fullest extent permitted by law, except where the events directly giving rise to claims for

indemnification shall have resulted from the acts or omissions of the "Indemnitees" (as hereinafter defined), indemnify and save harmless (a) CDA and its members, agents, officials, officers, employees, representatives, and (b) the City and members of the City Council of the City, and the City's agents, officials, officers, employees, representatives (all of the foregoing, in the preceding clauses (a) and (b), being herein referred to collectively as the "Indemnitees"), from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable engineers', architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any of the Indemnitees at any time by reason of any of the following:

(a) Construction of the Project Improvements or any other work or thing done in, on or about the Premises or any parts thereof;

(b) Any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises, or any parts thereof or of any street, alley, sidewalk, curb, vault, passageway or space comprising a part thereof or adjacent thereto;

(c) Any act or failure to act on the part of the Company or its agents, contractors, servants, employees, licensees or invitees;

(d) Any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in, on or about the Premises or any parts thereof or in, on or about any street, alley, sidewalk, curb, vault, passageway, or space comprising a part thereof adjacent thereto;

(e) Any failure on the part of the Company to comply with all laws or to pay the Rent, the Additional Rent or any other sums and/or charges due and payable hereunder or to perform or comply with all the covenants, agreements terms and conditions contained in this Lease on its part to be performed or complied with (including, without limitation, the Company's obligations under Article IV hereof);

(f) Any lien or claim which may be alleged to have arisen against or on the Premises or any parts thereof or any lien or claim created or permitted to be created by the Company against any assets of, or funds appropriated to, any of the Indemnitees under any laws which may be asserted against any of the Indemnitees with respect thereto;

(g) Any failure of the Company to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the Construction Agreements, the Financing Documents or other contracts and agreements affecting the Premises on the Company's part to be kept, observed or performed by the Company;

(h) Except as otherwise set forth in this Lease or the LDA or related documents, any tax, levy or charge attributable to the execution, delivery or recording of this Lease or any memorandum hereof, or the conveyance of the Premises or interests therein to the Company as hereinafter provided;

(i) Any contest permitted pursuant to the provisions of Article VI hereof; and

(j) Any claim for brokerage commissions, fees or other compensation by any Person who shall allege to have acted or dealt with the Company in connection with any of the transactions contemplated hereby.

Section 20.2 **Not Affected by Status of Insurance.** The obligations of the Company under this Paragraph 20 shall not be affected in any way by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any parts thereof.

Section 20.3 **Defense of Claims.** If any claim, action or proceeding is made or brought against any of the Indemnites by reason of any event to which reference is made in Section 20.1, then, upon demand by CDA, the Company, without cost or expense to CDA or any of the other Indemnites, shall resist or defend such claim, action or proceeding in such Indemnitee's name, if necessary, with attorneys for the Company's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise with such attorneys as CDA shall approve, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, CDA and any of the other Indemnities may engage their own attorneys at the Company's expense, to defend it or to assist in its defense if CDA shall reasonably determine that the attorneys selected by the Company cannot represent both CDA and the Company in connection with the defense of any such claim, action, or proceeding. In such event, CDA agrees that it will not settle or compromise any such claim, action or proceeding without the approval of the Company, which approval shall not be unreasonably withheld or delayed.

Section 20.4 **Survival.** The provisions of this Article XX shall survive the expiration of this Lease or date of sooner termination of this Lease.

ARTICLE XXI

RIGHTS OF THE CITY

Notwithstanding anything to the contrary contained herein, YIDA hereby agrees and the Company hereby acknowledges that the Premises are demised to YIDA on behalf of the Company as Sponsor under the urban renewal laws of the State of New York, subject to all rights of the City, including, without limitation, rights of access, granted by law as against privately owned or privately occupied property within the municipal boundaries of the City for the enforcement of all duties and obligations pursuant to its Charter and Code as a municipal corporation of the State of New York to preserve, protect and promote the general welfare, health and safety, and nothing contained in this Lease is intended or is to be interpreted as reducing, limiting, increasing, or otherwise affecting CDA's rights, duties and/or obligations in such regard.

ARTICLE XXII

MISCELLANEOUS GENERAL PROVISIONS

Section 22.1 Rules of Interpretation.

(a) Applicable Law. This Lease shall be governed by and interpreted and construed under the laws of the State of New York.

(b) References: Headings. Unless expressly provided otherwise in this Lease, each reference in this Lease to a particular Article, Section, subsection, paragraph or clause shall be to such Article, Section, subsection, paragraph or clause of this Lease. Headings of Articles and Sections are inserted only for convenience and are not, and shall not be deemed, a limitation on the scope of the particular Articles, Sections or subsections to which they refer.

(c) "Including". In this Lease, whenever general words or terms are followed by the word "including" (or another form of the word "include") and words of particular and specific meaning, the general words shall be construed in their widest extent to mean "including, without limitation", and shall not be limited to persons or things of the same general kind or class as those specifically mentioned in the words of particular and specific meaning.

(d) No Construction Against Drafting Party. No provision of this Lease shall be construed against or interpreted to the disadvantage of either CDA, the Company or YIDA by any court or other governmental or judicial authority by reason of such party having or being deemed to have drafted, structured or dictated such provision.

(e) Exhibits. Each exhibit referred to in this Lease is attached to and incorporated by reference in this Lease.

Section 22.2 Negation of Partnership. Nothing in this Lease shall be construed to render or constitute CDA in any way or for any purpose a partner, joint venturer or associate in any relationship with YIDA or the Company, nor shall this Lease be construed to authorize either party to act as agent for the other party except as expressly provided in this Lease.

Section 22.3 Notices. Any notices, requests or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand or reputable courier (including Federal Express and other such services) or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each party at its address as set forth below:

If to CDA:

Yonkers Community Development Agency
87 Nepperhan Avenue
Yonkers, New York 10701
Attention: Executive Director

With Copy to:

Corporation Counsel
City of Yonkers
City Hall
Yonkers, New York 10701

If to YIDA:

City of Yonkers Industrial Development Agency
City Hall
40 South Broadway
Yonkers, New York 10701
Attention: _____

With a copy to:
Harris Beach LLP
99 Garnsey Road
Pittsford, New York 14534
Attention: Shawn M. Griffin, Esq.

If to Leasehold Mortgagee:

Attention:

If to the Company:

Struever Fidelco Cappelli LLC
115 Stevens Avenue
Valhalla, New York 10595
Attn: Louis R. Cappelli

With a copy to:

Joseph Apicella
Executive Vice President
Cappelli Enterprises, Inc.
115 Stevens Avenue
Valhalla, New York 10595

Marc E. Berson
Fidelco Yonkers LLC
225 Millburn Avenue – Suite # 202
Millburn, New Jersey 07041

Marla S. Smith

Fidelco Yonkers, LLC
225 Millburn Avenue – Suite # 202
Millburn, New Jersey 07041

DelBello Donnellan Weingarten Wise & Wiederkehr, LLP
One North Lexington Avenue
White Plains, New York 10601
Attn: Alfred B. DelBello, Esq.
Attn: Peter J. Wise, Esq.

Any notice, request, or other communication shall be considered given on the date of such hand or courier delivery or deposit in the United States mail, and shall be considered given on the date of hand or courier delivery or on the third (3rd) day following deposit in the United States mail as provided above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, request or other communication. By giving at least five (5) days' prior written notice, either party may from time to time and at any time change its mailing address for purposes of this Lease. Any notice, request or other communication required or permitted to be given by any party may be given by such party's legal counsel.

Section 22.4 Fees and Commissions. CDA and YIDA represent and warrant, each to the other, that they have not discussed this Lease or its subject matter with any real estate broker, agent or salesman so as to create any legal right in any-such broker, agent or salesman to claim a real estate commission or similar fee with respect to the transactions contemplated by this Lease. CDA and YIDA indemnify each other against and agree to hold each other harmless from any and all claims (including court costs and attorneys' fees incurred in connection with any such claims) for any real estate commissions or similar fees arising out of or in any way connected with any claimed agency relationship with the indemnitor and relating to any of the transactions contemplated by this Lease.

Section 22.5 Waiver. The failure of either CDA or YIDA to insist upon strict performance of any of the terms or provisions of this Lease or to exercise any option, right or remedy contained in this Lease, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy. No waiver by either CDA or YIDA of any term or provision of this Lease shall be deemed to have been made unless expressed in writing and signed by such party.

Section 22.6 Estoppel Certificates. Each party shall, without charge, at any time and from time to time, within twenty (20) days after request by the other party or Leasehold Mortgagee, certify, to any person identified by the requesting party, by written instrument, duly executed, acknowledged and delivered, to the effect that this Lease is

unmodified and in full force and effect (or if there shall have been modifications that the same is in full force and effect as modified and stating the modifications) and the dates to which the Rent and other charges, if any, have been paid, the date of expiration of the Term, the Rent then payable under this Lease, and stating whether or not any Notice of Default has been given to the other party with respect to an Event of Default which has not been cured and, whether or not, to the best knowledge of the Person executing such estoppel certificate on behalf of such party, the other party is in default in performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default or Event of Default of which the Person executing such estoppel certificate may have knowledge.

Section 22.7 Amendments. This Lease and its provisions may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought and by the Leasehold Mortgagee.

Section 22.8 Severability. If any provision of this Lease or the application of any provision to any Person or circumstance is or becomes invalid or unenforceable to any extent, then the remainder of this Lease and the application of such provisions to any other any other Person or circumstances shall not be affected by such invalidity or unenforceability and shall be enforced to the greatest extent permitted by law.

Section 22.9 Memorandum. Promptly upon request from YIDA, the Company or CDA or Leasehold Mortgagee, the other parties hereto shall execute a memorandum of lease setting forth the principal terms of this Lease, and otherwise in form and content reasonably acceptable to both parties, which the requesting party may record at its expense in the Westchester County Clerk's Office, Land Records Division, and in such other location as may from time to time be provided by law as the proper place for recordation of a memorandum of this Lease.

Section 22.10 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

Section 22.11 Binding Effect. Subject to any restrictions on transfer contained in this Lease, this Lease shall inure to the benefit of and be binding on CDA and YIDA, and through YIDA to the Company, as acknowledged herein, and their respective legal representatives, successors and assigns.

Section 22.12 Joint and Several. If the Company at any time consists of more than one Person, then the obligations of all such Persons constituting the Company described under this Lease shall be joint and several. The foregoing shall not be deemed to impose liability on any stockholder, limited partner or passive investor of any entity which constitutes the Company.

Section 22.13 No Merger of Estates. CDA, YIDA and the Company intend that until, but only until, Final Completion of the Project Improvements, this Lease continue in effect, CDA's interest as landlord shall be preserved and not be terminated or

otherwise affected by the doctrine of merger of estates upon the ownership by the same Person of both the fee title of the Premises and the landlord's Leasehold Estate under this Lease or the Company's interest under the Sublease. . Notwithstanding the foregoing or anything to the contrary in this Lease, the Sublease or the LDA, neither the YIDA nor the Company shall be obligated to pay Rent after the transfer to the Company of fee title to the Premises.

Section 22.14 Date for Performance. If the time, period or date by which any right, option, election, act or notice provided under this Lease must be exercised, performed or given, expires or occurs on a Saturday, Sunday or legal or bank holiday, then such time period or date shall be automatically extended through the close of business on the next regularly scheduled business day.

Section 22.15 Intentionally Omitted.

Section 22.16 Relation to LDA. Except as expressly modified by this Lease, the provisions of the LDA shall remain in full force and effect; provided, however, if there is any inconsistency between the terms and provisions of this Lease and the terms and provisions of the LDA, then the terms and provisions of this Lease shall prevail.

Section 22.17 Gender, Etc. As used in this Lease, the masculine shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular as the context may require.

Section 22.18 No Third Party Beneficiaries. Except as may be expressly provided to the contrary in this Agreement, nothing contained in this Lease shall be construed to confer upon any person other than the parties hereto, any rights, remedies, privileges, benefits or causes of action to any extent whatsoever.

Section 22.19 Successors and Assigns. The agreements, terms, covenants and conditions of this Lease shall be binding upon and inure to the benefit of CDA, YIDA and the Company and, except as otherwise provided herein, their respective successors and permitted assigns.

Section 22.20 Further Assurances. Each party hereto shall do all acts and things and make, execute and deliver such written instruments as shall from time to time be reasonably required to carry out the terms and provisions of this Lease.

Section 22.21 Separability. Unenforceability for any reason of any provision of this Lease shall not limit or impair the operation or validity of any other provision of this Lease and if any term or provision of this Lease or the application thereof to any person or circumstance shall for any reason and to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances to which it is valid or enforceable, shall not be limited, impaired or otherwise affected thereby, and each term and provision of this Lease shall be valid and enforced to the extent permitted by law.

Section 22.22 Entire Agreement. This Lease, together with the exhibits hereto and the LDA, contains all of the promises, agreements, conditions, inducements and understandings between the CDA and YIDA concerning the matters addressed in this Lease, and there are no promises, agreements, conditions, inducements or understandings, oral or written, expressed or implied, between them other than as expressly set forth herein and therein.

Section 22.23 Supplemental Payment. Notwithstanding anything to the contrary in this Lease:

(a) if the construction of the Guaranteed Phase I Development at River Park Center has not commenced but the LDA has not terminated with respect to River Park Center, then upon the closing of the sale by the Company of each residential condominium unit at the Premises, the Company shall deposit the amount of \$5,000.00 per unit with the CDA in escrow, and then (x) if and when the construction of the Guaranteed Phase I Development at River Park Center commences in accordance with the LDA, all such funds shall be paid to the Company, or (y) if and when the LDA is terminated with respect to River Park Center, all such funds shall be paid the CDA; and

(b) if construction of the Guaranteed Phase I Development at River Park Center has not commenced and the LDA has terminated with respect to River Park Center, then upon the closing of the sale by the Company of each residential condominium unit at the Premises, the Company shall pay the amount of \$5,000.00 per unit to the CDA.

Section 22.24 Effectiveness. This Lease shall not be binding or effective until executed and delivered by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement of Lease as of the day and year first above written.

YONKERS COMMUNITY DEVELOPMENT
AGENCY

By: _____
Name: Philip A. Amicone
Title: Chairman

CITY OF YONKERS INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Name: _____
Title: Executive Director

The Company, as the qualified and eligible Sponsor under Section 507(2)(d) of Article 15 of the General Municipal Law of the State of New York, hereby acknowledges and accepts the terms and provisions of this Agreement of Lease as the agent of YIDA to the extent such terms and provisions are applicable to or binding upon the Company, as more particularly set forth in the Sublease with YIDA.

[Insert name of Company]

By:

By: _____

Name:

Title:

Acknowledgments

STATE OF NEW YORK }
 } s.s.:
COUNTY OF WESTCHESTER }

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared Philip A. Amicone, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK }
 } s.s.:
COUNTY OF WESTCHESTER }

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK }
 } s.s.:
COUNTY OF WESTCHESTER }

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

SCHEDULE A
Real Property Description

Exhibit A
Permitted Title Exceptions

Exhibit B
Form of Deed

Transcript Document _____

BARGAIN AND SALE DEED
(without covenant against Grantor's Acts)

Dated _____, 2009

from

YONKERS COMMUNITY DEVELOPMENT AGENCY, Grantor

to

[_____SFC H and I LLC_____], Grantee

Section:

Block:

Lots:

City of Yonkers

Westchester County

Record and Return to:

DelBello Donnellan Weingarten Wise & Wiederkehr, LLP

One North Lexington Avenue

White Plains, New York 10601

Attn.: Alfred B. DelBello, Esq.

Attn.: Peter J. Wise, Esq.

THIS INDENTURE, made as of _____, 200_ between the YONKERS COMMUNITY DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its principal office at 40 South Broadway, Yonkers, New York 10701 ("Grantor") and the [NEWCO], a limited liability company organized and existing under the laws of the State of New York, having its principal office at 115 Stevens Avenue, Valhalla, New York 10595 ("Grantee").

WHEREAS, in furtherance of Articles 15 and 15-A of the General Municipal Law of the State of New York, as amended (the "Urban Renewal Law"), the City of Yonkers (the "City") has undertaken a program for the acquisition, clearance, replanning, reconstruction and neighborhood rehabilitation of slum and blighted areas in the City, and in this connection, the Grantor has been engaged in carrying out an urban renewal program, as more particularly set forth in the Modified Urban Renewal Plan, N.D.P. Areas No. 1 and 2 for the Riverview Urban Renewal Area dated, dated December, 1998, and last amended in October, 2004 and _____, 2009 (the "Riverview Urban Renewal Plan"); and

WHEREAS, in furtherance of the Riverview Urban Renewal Plan, Grantor and Grantee entered into a certain Urban Renewal Land Disposition Agreement, dated as of _____2009 a memorandum of which is and recorded in the Office of the Office of the Westchester County Clerk, Land Records Division (the "County Clerk's Office") on _____2009 as Control No. _____(the "LDA"), which provided for, among other things, a development lease, as more particularly described below, by Grantor to the City of Yonkers Industrial Development Agency ("YIDA"), for redevelopment, of certain parcels of land located within the Riverview Urban Renewal Area and designated as follows, and as more particularly described in Schedule A attached hereto and made a part hereof (the "Premises"):

[LIST ALL PARCELS DESIGNATED UNDER DEVELOPMENT LEASE FOR THE PALISADES POINT PROJECT]

WHEREAS, the planning objectives of Grantor and the City for the redevelopment of the Premises include the objectives of (A) generating the greatest possible economic demand in support of commercial, recreational, residential, governmental and other uses in the downtown area of the City, in furtherance of the revitalization of such area, and (B) the goals and objectives of the Riverview Urban Renewal Plan; and

WHEREAS, in accordance with the LDA, Grantor, Grantee and YIDA entered into a certain development lease agreement for the Premises, dated as of _____, a memorandum of which was recorded in the County Clerk's Office on _____as Control No. _____ (the "Development Lease"); and

WHEREAS, Grantee and YIDA entered into a certain sublease agreement for the Premises dated as of _____, a memorandum of which was recorded in the County Clerk's Office on _____ under Control No. _____, (sometimes referred to herein as the "Financing Lease"); and pursuant to such Financing Lease, Grantee has

commenced construction (as defined in the Development Lease) for the redevelopment of the Premises (the "Improvements"), said Improvements being defined and described in Paragraph 2 below; and

[**WHEREAS**, Grantor, Grantee, YIDA, as grantors, entered into a certain environmental easement with the Commissioner of the Department of Environmental Conservation, as grantee ("DEC"), on behalf of the People of the State of New York dated as of _____ and recorded in the County Clerk's Office on _____ as Control No. _____ ("Environmental Easement"); and [*use only if applicable*]

WHEREAS, the LDA and Development Lease provide that Grantee shall purchase the Premises from Grantor in its AS IS condition without any warranty as to the condition of the Premises, and to cause Grantor to sell the same to Grantee, upon certain terms and conditions set forth in the LDA, for the purchase price of **\$2,850,000**; and

NOW, THEREFORE, WITNESSETH, that Grantor, for the consideration hereinabove described provided by Grantee, does hereby grant, convey and release unto Grantee, its successors and assigns forever, all that piece or parcels of land comprising the Premises, together with all buildings and improvements thereon, and all easements, rights of way, privileges and appurtenances thereto in their as-is condition without warranty as to the condition of the Premises, subject to the Development Lease and the Financing Lease, without merger of interest, and subject to all recorded covenants, easements and restrictions,

TO HAVE AND TO HOLD said Premises herein granted unto Grantee, its successors and assigns, forever without merger of Grantor's leasehold interest under the Development Lease, which interest shall remain a reserved right under this Indenture and the Development Lease, and shall be separate and distinct from Grantee's fee title interest until termination or expiration of the Development Lease and the Financing Lease.

SUBJECT to the following terms, covenants and conditions, to which Grantee, by acceptance of this Indenture, agrees on behalf of itself, its successors and assigns:

1. [intentionally omitted]

2. Grantee agrees to operate the Premises to further the purposes of the Urban Renewal Law in accordance with the Riverview Urban Renewal Plan. The Premises shall not be used for any purpose other than as provided in the Development Lease, in accordance with the LDA, for the development, construction and operation of the Premises (collectively, the "Improvements") containing (a) a building having two (2) twenty-five (25) story high towers and a five (5) story wing, containing in the aggregate approximately 436 dwelling units and 8,700 square feet of retail and/or professional office space; (b) Two (2) parking structures within the building containing approximately 670 private parking spaces, of which 184 parking spaces shall be constructed exclusively for residents of the Scrimshaw House condominium (such 184 spaces, the "Scrimshaw House Parking Facility"), (c) approximately fifty seven (57) public parking spaces located at-grade and in a parking lot located in the southern portion of the Palisades Point

Site; (d) approximately_____ square feet of landscaped open space (the "Palisades Point Open Space"). The Palisades Point Open Space (except the Hudson River Esplanade described below) shall be privately owned, but publicly accessible; (e) a new street (the "New Street") that connects to and extends Water Grant Street south through the Palisades Point Site along the Metro-North Railroad tracks. The New Street shall be dedicated as a City public street and shall provide vehicular access to the property owned by the American Sugar Refinery, Inc. (the "Sugar Refinery Property") due south of and adjacent to the Palisades Point Site. The parties acknowledge that the Sugar Refinery Property is currently benefited by an easement (the "Sugar Refinery Easement") for vehicular access over the Palisades Point Site; and (f) the Palisades Point project also includes: (i) improvements and enhancements to the existing City park known as Hudson Park (also known as the "sculpture park"). [include all items in Section 5.1 of Lease]

This Paragraph 2 shall remain in full force and effect until the expiration and or termination of the Riverview Urban Renewal Plan, unless such provisions are otherwise extended pursuant to law, and the LDA and Development Lease shall not be amended or terminated without the written consent of Grantor and YIDA.

3. Grantee will not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, age, sex, marital status or disability, and will take affirmative action to insure that they are afforded equal employment opportunities without discrimination because of race, religion, creed, color, national origin, age, sex, marital status or disability. Such action shall be taken with reference, but not be limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training. Grantee will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Division of Human Rights setting forth such provisions against discrimination as the Division of Human Rights shall determine. This Paragraph 3 shall remain in full force and effect until the expiration and or termination of the Riverview Urban Renewal Plan, unless such provisions are otherwise extended pursuant to law, and shall also run in favor of, and be enforceable by, the State of New York and the United States.

4. Grantee agrees to include in all advertising for the sale of or rental of residential dwelling units or commercial space comprising the Improvements, a statement setting forth the following undertakings: (i) that such Improvements are open to all persons without discrimination on the basis of race, religion, creed, color, national origin, sex, age, disability, marital status or sexual orientation, and (ii) that there shall be no such discrimination in public access to and use of those parts of the Improvements that are open to the public. This Paragraph 4 shall remain in full force and effect until the expiration and or termination of the Riverview Urban Renewal Plan, unless such provisions are otherwise extended pursuant to law, and shall also run in favor of, and be enforceable by, the State of New York and the United States.

Only use if applicable. [5. This Indenture is subordinate to the Environmental Easement which contains covenants and restrictions on the Premises that run with the land and bind the Premises for the entire period during which such use restriction are in force and effect,

without regard to whether Grantee retains any interest in the Premises. Grantee, its successors and assigns, covenant and agree that until such time as the Environmental Easement is extinguished in accordance with the requirements of Article 71, Title 36 of the ECL, this Indenture and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

“This property is subject to an environmental easement held by the New York State Department of Environmental Conservation pursuant of Title 36 to Article 71 of the Environmental Conservation Law.”]

6. Grantee shall not do or permit any act or thing to be done upon the Premises which may subject Grantor to any liability or responsibility for injury, damage to persons or property, or to any liability by reason of any violation of law, and shall exercise such control over the Premises as may be necessary or advisable so as to fully protect Grantor against any such liability. Grantee agrees that Grantee shall, to the fullest extent permitted by law, except where the events directly giving rise to claims for indemnification shall have resulted from the acts or omissions of the "Indemnitees" (as hereinafter defined), indemnify and save harmless (a) Grantor and its members, agents, officials, officers, employees, representatives, (b) the City of Yonkers and members of the City Council of the City, and the City's agents, officials, officers, employees, representatives and (c) YIDA and its members, agents, officials, officers, employees, representatives (all of the foregoing, in the preceding clauses (a), (b) and (c), being herein referred to collectively as the "Indemnitees"), from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable engineers', architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any of the Indemnitees at any time by reason of any of the following:

(a) Construction of the Improvements or any other work or thing done in, on or about the Premises or any parts thereof;

(b) Any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises, or any parts thereof or of any street, alley, sidewalk, curb, vault, passageway or space comprising a part thereof or adjacent thereto;

(c) Any act or failure to act on the part of the Grantee or its agents, contractors, servants, employees, licensees or invitees;

(d) Any accident, injury (including death at any time resulting therefrom) or damage to any person or property occurring in, on or about the Premises or any parts thereof or in, on or about any street, alley, sidewalk, curb, vault, passageway, or space comprising a part thereof adjacent thereto;

(e) Any failure on the part of the Grantee to comply with all laws or to perform or comply with all the covenants, agreements terms and conditions contained in this Indenture on its part to be performed or complied with;

(f) Any lien or claim which may be alleged to have arisen against or on the Premises or any parts thereof or any lien or claim created or permitted to be created by the Grantee against any assets of, or funds appropriated to, any of the Indemnitees under any laws which may be asserted against any of the Indemnitees with respect thereto;

(g) Any failure of the Grantee to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the Construction Agreements, the Financing Documents or other contracts and agreements affecting the Premises on the Grantee's part to be kept, observed or performed by the Grantee;

(h) Except as otherwise set forth in the LDA or related documents, any tax, levy or charge attributable to the execution, delivery or recording of this Indenture or any memorandum hereof; and

(i) Any claim for brokerage commissions, fees or other compensation by any person who shall allege to have acted or dealt with the Grantee in connection with any of the transactions contemplated by the LDA.

The obligations of the Grantee under this Paragraph 6 shall not be affected in any way by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any parts thereof.

If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in Section 6, then, upon demand by Grantor, the Grantee, without cost or expense to Grantor or any of the other Indemnitees, shall resist or defend such claim, action or proceeding in such Indemnitee's name, if necessary, with attorneys for the Grantee's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise with such attorneys as Grantor shall approve, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Grantor and any of the other Indemnities may engage their own attorneys at the Grantee's expense, to defend it or to assist in its defense if Grantor shall reasonably determine that the attorneys selected by the Grantee cannot represent both Grantor and the Grantee in connection with the defense of any such claim, action, or proceeding. In such event, Grantor agrees that it will not settle or compromise any such claim, action or proceeding without the approval of the Grantee, which approval shall not be unreasonably withheld or delayed.

7. Grantor, in compliance with Section 13 of the Lien Law, covenants that Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the Improvement before using any part of the total of the same for any other purpose.

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IN WITNESS WHEREOF, the Grantor has caused these presents to be subscribed to by its Chairman the date and year first above written.

YONKERS COMMUNITY DEVELOPMENT AGENCY, Grantor

By: _____

Name:

Title: Chairman

STRUEVER FIDELCO CAPPELLI LLC, Grantee

By: _____

Name:

Title:

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.

On the ____ day of _____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.

On the ____ day of _____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

SCHEDULE A

DESCRIPTION OF THE PREMISES

